

# **EXHIBIT 3**

Case No. 14-CV-704-GKF-JFJ

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

Plaintiff,

and Case No.14-CV-704-GFK-JFJ

OSAGE MINERALS COUNCIL,

Intervenor-Plaintiff,

Vs.

OSAGE WIND, LLC;  
ENEL KANSAS, LLC; and  
ENEL GREEN POWER NORTH AMERICA,  
INC.

Defendants.

13 ZOOM/VIDEOTAPED DEPOSITION OF MATT GILHOUSEN  
14 TAKEN ON BEHALF OF THE INTERVENOR-PLAINTIFF  
15 ON SEPTEMBER 10, 2021, BEGINNING AT 9:13 A.M.  
16 ALL PARTIES APPEARING VIA ZOOM

17      APPEARANCES:

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(Appearances continued on next page)

25 REPORTED BY: MARCY A. KING, CSR, RPR

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1 APPEARANCES (Continued)

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Michelle Hammock, Julie Combs,

Christina Watson

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1 STIPULATIONS

2

3 It is hereby stipulated and agreed by and

4 between the parties hereto, through their

5 respective attorneys, that the deposition of MATT

6 GILHOUSEN may be taken pursuant to agreement and

7 in accordance with the Federal Rules of Civil

8 Procedure on September 10, 2021, before Marcy A.

9 King, CSR, RPR.

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<p>Page 6</p> <p>1 THE VIDEOGRAPHER: This is the</p> <p>2 videotaped deposition of Matt Gilhousen taken on</p> <p>3 behalf of the Intervenor-Plaintiff in the matter</p> <p>4 of the United States of America, Plaintiff; Osage</p> <p>5 Mineral Council, Intervenor-Plaintiff, versus</p> <p>6 Osage Wind, LLC, et al. filed in the United States</p> <p>7 District Court for the Northern District of</p> <p>8 Oklahoma, Case Number 14 CV-704-GFK-JFJ.</p> <p>9 This deposition is being held via web</p> <p>10 conference on Friday, September 10th, 2021.</p> <p>11 We're on the record at 9:13 a.m.</p> <p>12 Will counsel please state their</p> <p>13 appearances for the record.</p> <p>14 MS. BLAKE: Shoney Blake for the</p> <p>15 Osage Minerals Council along with Mary Kathryn</p> <p>16 Nagle and Jenny Combs.</p> <p>17 MR. FIELDS: Nolan Fields for the</p> <p>18 United States of America with Cathryn McClanahan,</p> <p>19 and paralegals Michelle Hammock and Christina</p> <p>20 Watson.</p> <p>21 MR. BALL: Robin Ball and</p> <p>22 Christopher White for the defendants and also here</p> <p>23 is Lynn Slade with the Modrall Sperling firm.</p> <p>24 MR. MAY: Kirk May for the</p> <p>25 witness, Mr. Gilhousen.</p>	<p>Page 8</p> <p>1 denial of a conditional use permit.</p> <p>2 <b>Q And I'm assuming that was not done</b></p> <p>3 <b>virtually, correct?</b></p> <p>4 A Correct. That was done in person.</p> <p>5 <b>Q Okay. So, just so you know today,</b></p> <p>6 <b>since we're on Zoom, all of the exhibits obviously</b></p> <p>7 <b>will be through share screen, and so Julie will be</b></p> <p>8 <b>doing that for me. And so if you need -- if you</b></p> <p>9 <b>need us to scroll back or to make things bigger or</b></p> <p>10 <b>for, you know, better orientation within a</b></p> <p>11 <b>document itself, just let us know because it can</b></p> <p>12 <b>be different and a little difficult online.</b></p> <p>13 A Understood.</p> <p>14 <b>Q What have you done to prepare for your</b></p> <p>15 <b>deposition today?</b></p> <p>16 A I've not been made privy to any</p> <p>17 documents or done any research per se. I just had</p> <p>18 several conversations with Kirk about the process,</p> <p>19 and that's it.</p> <p>20 (An off the record discussion was had)</p> <p>21 THE VIDEOGRAPHER: Off the record</p> <p>22 at 9:18 a.m.</p> <p>23 (A break was taken from 9:18 to 9:26 a.m.)</p> <p>24 THE VIDEOGRAPHER: We are back on</p> <p>25 the record at 9:26 a.m.</p>
<p>Page 7</p> <p>1 THE VIDEOGRAPHER: Thank you. The</p> <p>2 court reporter will now swear the witness.</p> <p>3 We're off the record at 9:14 a.m.</p> <p>4 (A break was taken from 9:14 to 9:15 a.m.)</p> <p>5 THE VIDEOGRAPHER: Back on the</p> <p>6 record at 9:15 a.m.</p> <p>7 MATT GILHOUSEN,</p> <p>8 of lawful age, being first duly sworn, testified</p> <p>9 on his oath, as follows:</p> <p>10 DIRECT EXAMINATION</p> <p>11 BY MS. BLAKE:</p> <p>12 <b>Q Hi, Mr. Gilhousen, I am Shoney Blake.</b></p> <p>13 <b>As I said before, I'm with Pipestem &amp; Nagle</b></p> <p>14 <b>representing Osage Minerals Council.</b></p> <p>15 <b>Have you ever testified in a litigation</b></p> <p>16 <b>before today?</b></p> <p>17 A I have been in a deposition before,</p> <p>18 probably 20 years ago.</p> <p>19 <b>Q Okay. Did that involve the Osage</b></p> <p>20 <b>Minerals Council or wind farm technology?</b></p> <p>21 A It did not involve the Osage Minerals</p> <p>22 Council. It did involve a wind project that was</p> <p>23 -- I believe the land -- it's been years ago, but</p> <p>24 I believe the landowners associated with the</p> <p>25 project were filing suit against the county for a</p>	<p>Page 9</p> <p>1 <b>Q (By Ms. Blake) Mr. Gilhousen, we were</b></p> <p>2 <b>just talking about, I was just letting you know</b></p> <p>3 <b>that exhibits -- if you need us to slow down</b></p> <p>4 <b>scrolling or go to a different part of the exhibit</b></p> <p>5 <b>just let Julie know because it's a little</b></p> <p>6 <b>different through share screen than it would</b></p> <p>7 <b>normally be in person.</b></p> <p>8 <b>Also, if you need to take a break or</b></p> <p>9 <b>anything, please -- or want to take a break,</b></p> <p>10 <b>please also let me know that. This doesn't have</b></p> <p>11 <b>to be a marathon today.</b></p> <p>12 <b>So did you speak with anyone other than</b></p> <p>13 <b>counsel about today's deposition?</b></p> <p>14 A I believe I spoke with Lynn Slade and I</p> <p>15 spoke with my former partner, Rob Freeman. And I</p> <p>16 believe there was one other -- Robin with Norton</p> <p>17 Rose was on the phone with Lynn Slade. And other</p> <p>18 than Kirk, that's it.</p> <p>19 <b>Q Okay. Great. And then did you speak</b></p> <p>20 <b>with Mr. Freeman before or after his deposition?</b></p> <p>21 A Before.</p> <p>22 <b>Q Okay. Did you review any documents to</b></p> <p>23 <b>prepare for today?</b></p> <p>24 A I did not.</p> <p>25 <b>Q All right. Let's see. And then is</b></p>

<p style="text-align: right;">Page 10</p> <p>1 anyone in the room with you other than your</p> <p>2 counsel?</p> <p>3 A No.</p> <p>4 Q All right. So I'm going to get into</p> <p>5 it. Where did you work before Tradewind Energy?</p> <p>6 A I worked at Chapman &amp; Associates.</p> <p>7 Q And what kind of firm was that?</p> <p>8 A An environmental engineering firm.</p> <p>9 Q And what was your position there?</p> <p>10 A I was a junior engineer, an engineer in</p> <p>11 training.</p> <p>12 Q Environmental engineering or what kind</p> <p>13 of engineering?</p> <p>14 A I have a degree in civil engineering.</p> <p>15 Q And then is that what you were doing --</p> <p>16 is it Chapman?</p> <p>17 A Chapman &amp; Associates. I was -- my time</p> <p>18 there, I was -- I was there for only a period of</p> <p>19 three or four months and I was doing field work</p> <p>20 associated with groundwater remediation in</p> <p>21 Oklahoma City. Taking water samples and those</p> <p>22 sort of things.</p> <p>23 Q And so then you founded Tradewind right</p> <p>24 after you were at Chapman?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 were the primary partners in the business early</p> <p>2 from the inception to when it was sold to Enel.</p> <p>3 Q That's Rob Freeman and Geoff Coventry,</p> <p>4 correct?</p> <p>5 A Yes.</p> <p>6 Q How did you divide your</p> <p>7 responsibilities within Tradewind? You, Geoff</p> <p>8 and Rob.</p> <p>9 MR. BALL: Objection to form.</p> <p>10 THE WITNESS: Rob was the Chief</p> <p>11 Executive Officer. Geoff was really -- he was the</p> <p>12 -- I guess you would call him the Chief Operating</p> <p>13 Officer and I was the Chief Development Officer.</p> <p>14 My title didn't start out that way. I was I think</p> <p>15 a vice-president of development. Our development</p> <p>16 director initially, and then grew into the Chief</p> <p>17 Development Officer role over time. And was a --</p> <p>18 I was a minority shareholder in the business the</p> <p>19 entire period.</p> <p>20 Q (By Ms. Blake) When exactly does the</p> <p>21 chief development officer do?</p> <p>22 A Generally speaking, the chief</p> <p>23 development officer in a renewable energy company</p> <p>24 would be responsible for running various teams,</p> <p>25 the staff basically that are responsible for, you</p>
<p style="text-align: right;">Page 11</p> <p>1 Q And can you tell me about groundwater</p> <p>2 treatment. That sounds like a big undertaking.</p> <p>3 A Yes. I joined a couple of my</p> <p>4 colleagues, Rob Freeman and Geoff Coventry over a</p> <p>5 year or so period back in 2002. After working at</p> <p>6 Chapman &amp; Associates for a brief stint, the --</p> <p>7 kind of mentor and boss at Chapman &amp; Associates</p> <p>8 was an early investor in Tradewind and was</p> <p>9 supportive of my move from Chapman &amp; Associates to</p> <p>10 the founding of Tradewind.</p> <p>11 Yeah. So it was -- I'm passionate</p> <p>12 about climate matters and environmental matters,</p> <p>13 and that was the origin of the start of business.</p> <p>14 Q And who are the other founders?</p> <p>15 A There was one other partner, Troy</p> <p>16 Helming, but that's -- that would be the only</p> <p>17 other founding partner. He left the business</p> <p>18 after a year or two to go on to other things.</p> <p>19 Q Sorry. You and Troy Helming were the</p> <p>20 founders?</p> <p>21 A I think technically Troy formed the</p> <p>22 business entity. I then joined very soon</p> <p>23 thereafter. And then Rob and Geoff both joined</p> <p>24 within -- I can't remember exactly how many</p> <p>25 months, or a year or so. But Rob, Geoff and I</p>	<p style="text-align: right;">Page 13</p> <p>1 know, real estate, the environmental studies,</p> <p>2 meteorology, the energy production, estimates.</p> <p>3 Any -- you know, any design work, as well as the</p> <p>4 permitting process.</p> <p>5 Q And as far as design work, what does</p> <p>6 that entail?</p> <p>7 A We -- we didn't do in-house</p> <p>8 engineering. We did really more the conceptional</p> <p>9 layout of the facilities, kind of placement of the</p> <p>10 turbines, you know, the access roads and</p> <p>11 alignments to understand what the energy</p> <p>12 production estimates were going to be. How solid</p> <p>13 -- a solid enough design that it could go through</p> <p>14 the permitting process, whatever that might be.</p> <p>15 And then typically the -- whoever was</p> <p>16 going to own and operate, build, own and operate</p> <p>17 the project would take it through the formal and</p> <p>18 final design process with a third party engineer.</p> <p>19 Q You mentioned -- you mentioned that you</p> <p>20 were in charge of permitting. How did you -- was</p> <p>21 there a formal process that you had at Tradewind</p> <p>22 when you were going through your permitting</p> <p>23 process?</p> <p>24 MR. BALL: Objection to form.</p> <p>25 THE WITNESS: I wouldn't say it's</p>

<p>Page 14</p> <p>1 a formal process, but there was a structure to it.</p> <p>2 We tried to rely on legal counsel to help us</p> <p>3 populate what we call a permitting matrix for</p> <p>4 whatever jurisdiction we're going into. So we --</p> <p>5 you know, it was mining for information to figure</p> <p>6 out what permits were applicable in any given</p> <p>7 state, county, based on where we were operating,</p> <p>8 trying to develop a wind project, or a solar</p> <p>9 project for that matter.</p> <p>10 <b>Q (By Ms. Blake) Did you use this same</b></p> <p>11 <b>council regardless of geographic location at the</b></p> <p>12 <b>project?</b></p> <p>13 A We had -- we worked closely with</p> <p>14 out-of-house counsel. We didn't have a general</p> <p>15 counsel in-house. We worked with Steve Willman</p> <p>16 and his team the majority of the time I was at</p> <p>17 Tradewind. And then we brought in other experts</p> <p>18 such as Lynn Slade and others depending on what we</p> <p>19 felt was appropriate for each particular location.</p> <p>20 <b>Q At the time you were developing the</b></p> <p>21 <b>Osage Wind Farm or Osage Wind wind farm, did you</b></p> <p>22 <b>have any other projects in Oklahoma?</b></p> <p>23 A I don't recall. We have developed</p> <p>24 other projects in Oklahoma, but I can't recall</p> <p>25 whether this was our first project in Oklahoma or</p>	<p>Page 16</p> <p>1 of Enel. Enel, the North American arm of Enel</p> <p>2 were the two primary organizations we dealt with</p> <p>3 at Enel.</p> <p>4 <b>Q (By Ms. Blake) And who at Enel Kansas</b></p> <p>5 <b>did you talk to, did you communicate with?</b></p> <p>6 A There were -- Enel had -- they're a</p> <p>7 massive corporation so they have a lot of</p> <p>8 different people that we interacted with. There's</p> <p>9 a couple of names that come to mind, board</p> <p>10 members. Mike Storch, Toni Volpe, Francesco</p> <p>11 Venturini. Yeah, I mean, there were -- I mean, I</p> <p>12 interfaced with most of the North American staff</p> <p>13 from time to time.</p> <p>14 <b>Q And was the North American -- by North</b></p> <p>15 <b>American staff do you mean Enel employees who</b></p> <p>16 <b>worked in North America or are you talking about</b></p> <p>17 <b>Enel Green Power North America?</b></p> <p>18 A I can't tell you what entity the</p> <p>19 employees worked for. They just represented Enel.</p> <p>20 I can't tell you if they worked for an entity out</p> <p>21 of -- Enel SPA out of Rome or they were based out</p> <p>22 of Enel Green Power. I can't tell you</p> <p>23 specifically which entity. They were just Enel</p> <p>24 employees.</p> <p>25 <b>Q So you mentioned Mr. Storch, Mr. Volpe</b></p>
<p>Page 15</p> <p>1 not.</p> <p>2 <b>Q That's fine. If you don't remember, I</b></p> <p>3 <b>don't want you to guess.</b></p> <p>4 <b>When did Tradewind start developing</b></p> <p>5 <b>projects with Enel?</b></p> <p>6 A Enel invested in Tradewind in 2006, I</p> <p>7 believe.</p> <p>8 <b>Q And how did that relationship come</b></p> <p>9 <b>about?</b></p> <p>10 A We were a relatively small -- small</p> <p>11 company at the time trying to compete with much</p> <p>12 larger utilities and much larger organizations.</p> <p>13 And we needed an institutional investor that could</p> <p>14 really fund the business appropriately relative to</p> <p>15 what we were trying to accomplish in the business</p> <p>16 we were in. Wind projects are very capitally</p> <p>17 intensive.</p> <p>18 <b>Q What were some of the -- or which all</b></p> <p>19 <b>entities did you interface with primarily?</b></p> <p>20 MR. BALL: Objection to form.</p> <p>21 THE WITNESS: Excuse me. He</p> <p>22 objected.</p> <p>23 MR. MAY: Yeah, you can go ahead.</p> <p>24 THE WITNESS: Okay. Enel Kansas I</p> <p>25 think was one of the organizations, subsidiaries</p>	<p>Page 17</p> <p>1 <b>and Mr. Venturini and you said they were board</b></p> <p>2 <b>members. Did you mean they were board members of</b></p> <p>3 <b>Tradewind or Enel?</b></p> <p>4 A Of Tradewind from time to time. I</p> <p>5 can't tell you who was a board member at which</p> <p>6 specific time, but they were all board members</p> <p>7 over the years at Tradewind.</p> <p>8 <b>Q Are they the only Enel employees that</b></p> <p>9 <b>you recall being board members of Tradewind?</b></p> <p>10 A Georgios Pergamalis and Georgios</p> <p>11 Papadimitriou were both board members as well.</p> <p>12 <b>Q Were they both based out of</b></p> <p>13 <b>North America, too?</b></p> <p>14 A Yes.</p> <p>15 <b>Q And then, let's see, let me look at my</b></p> <p>16 <b>outline.</b></p> <p>17 <b>Do you remember -- I know you said you</b></p> <p>18 <b>don't remember the exact times that people were on</b></p> <p>19 <b>the board, but do you remember when Enel employees</b></p> <p>20 <b>first joined the Tradewind board of directors?</b></p> <p>21 A 2006 would be my -- it was around 2006,</p> <p>22 it could have been late 2005, early 2006.</p> <p>23 Somewhere around 2006.</p> <p>24 <b>Q Okay. Mr. Freeman testified that in</b></p> <p>25 <b>2006 Tradewind agreed to grant Enel the right of</b></p>



<p style="text-align: right;">Page 18</p> <p>1 first refusal to purchase the wind projects that</p> <p>2 Tradewind was developing. Was that your</p> <p>3 recollection?</p> <p>4 A Correct. Yes.</p> <p>5 Q And were you ever employed by Enel?</p> <p>6 A No. Actually I need to think about</p> <p>7 that for a second. No. I was employed by</p> <p>8 Tradewind after Enel bought Tradewind.</p> <p>9 Q Okay.</p> <p>10 A But I was still an employee of</p> <p>11 Tradewind.</p> <p>12 Q I appreciate the precision. Thank you.</p> <p>13 As far as the right of first refusal in</p> <p>14 2006, were you one of the people that negotiated</p> <p>15 that?</p> <p>16 A I was not -- I was not the primary</p> <p>17 negotiator of that agreement. Rob would have</p> <p>18 taken point on that sort of negotiation.</p> <p>19 Q Okay. Let's see. So do you recall how</p> <p>20 many other wind farm projects you had worked on</p> <p>21 prior to Osage Wind?</p> <p>22 A Multiple. But I can't give you a</p> <p>23 specific number.</p> <p>24 Q That's fine.</p> <p>25 Did any of those projects, to your</p>	<p style="text-align: right;">Page 20</p> <p>1 And other times, as is the case with</p> <p>2 the Osage Wind project, we were purchasing a</p> <p>3 matured development asset from a third party. And</p> <p>4 in this instance, I believe it was Wind Capital</p> <p>5 Group.</p> <p>6 Q Did you do a lot of -- I'm sorry.</p> <p>7 Had you coordinated with Wind Capital</p> <p>8 Group before that Osage Wind project?</p> <p>9 A We had not done business with them. We</p> <p>10 had not bought a project with them or done</p> <p>11 business with them prior to that.</p> <p>12 Q Were you working on any project</p> <p>13 simultaneously with Osage Wind?</p> <p>14 A We -- yes. Yes.</p> <p>15 Q Did any of those projects involve</p> <p>16 Indian trust property?</p> <p>17 A Yes.</p> <p>18 Q Which one? Or can you describe -- what</p> <p>19 was the name of that project?</p> <p>20 A The Mustang Run project would be the</p> <p>21 one that comes to mind.</p> <p>22 Q And can you describe that project a</p> <p>23 little bit.</p> <p>24 A It was a -- it was a green -- I always</p> <p>25 call it a greenfield development adjacent to or</p>
<p style="text-align: right;">Page 19</p> <p>1 recollection, involve Indian trust property?</p> <p>2 A Not to my knowledge.</p> <p>3 Q Okay. And then were any of those</p> <p>4 projects in partnership with Enel?</p> <p>5 MR. BALL: Objection to form.</p> <p>6 THE WITNESS: We -- Tradewind</p> <p>7 developed -- am I supposed to answer here?</p> <p>8 MR. MAY: Yes. Unless I tell you</p> <p>9 not to.</p> <p>10 THE WITNESS: Yeah. So Tradewind</p> <p>11 developed projects on its -- we were a separate</p> <p>12 company.</p> <p>13 Q (By Ms. Blake) Uh-huh.</p> <p>14 A So we developed projects based on what</p> <p>15 our board -- got general guidance from our board</p> <p>16 in terms of which direction the company was to be</p> <p>17 going with its investments and development</p> <p>18 activity.</p> <p>19 And I think the development, their --</p> <p>20 at times we would acquire development assets from</p> <p>21 others and sometimes we would do what's called</p> <p>22 greenfield development, which is where we start</p> <p>23 from scratch and we figure out where we want to</p> <p>24 go. There's been no future -- no prior</p> <p>25 development there whatsoever.</p>	<p style="text-align: right;">Page 21</p> <p>1 near the Osage Wind project.</p> <p>2 Q Was it also in Osage County?</p> <p>3 A Yes.</p> <p>4 Q Okay. And was that project done in</p> <p>5 conjunction with Wind Capital Group?</p> <p>6 A No.</p> <p>7 Q Was it done in conjunction</p> <p>8 with Enel?</p> <p>9 MR. BALL: Objection. Form.</p> <p>10 THE WITNESS: I'm not sure I</p> <p>11 understand what conjunction means exactly.</p> <p>12 Q (By Ms. Blake) Were you financed by</p> <p>13 Enel for that project?</p> <p>14 A Enel was an investor/owner in Tradewind</p> <p>15 and a lender to Tradewind. So Tradewind was</p> <p>16 funding the development of that project.</p> <p>17 Q Okay. Was there an expectation that</p> <p>18 Enel would become the owner of Mustang Run?</p> <p>19 A I would point you to the business</p> <p>20 documents between Tradewind and Enel in that</p> <p>21 respect.</p> <p>22 Q Okay. So when did you work on the</p> <p>23 Osage Wind project?</p> <p>24 A It would have been in the 2010 to '16</p> <p>25 range. And I don't mean to be coy. It's been --</p>

<p style="text-align: right;">Page 22</p> <p>1 I've been out of the business for several years  2 now and this project was -- and I've done many,  3 many projects since this project, so the timeline  4 is a little fuzzy to me.  5 <b>Q That's fine.</b>  6 A I think it was in the 2013, '14. The  7 diligence process of acquiring that, that project,  8 I can't tell you exactly how early that was, if it  9 was 2010 or '11 or '12. But somewhere in that  10 range.  11 <b>Q Okay, that's helpful. I can't remember</b>  12 <b>things I did last week. So I'm not trying to be a</b>  13 <b>stickler.</b>  14 A Yeah.  15 <b>Q And then you had mentioned that your</b>  16 <b>title changed a little bit. What was your title</b>  17 <b>at the time that you started the diligence work?</b>  18 A I don't -- I don't recall. I guess,  19 yeah, my title evolved over time, but I was -- you  20 know, I was in generally the same position. Just  21 my title changed over time.  22 <b>Q Okay. And then I know you already</b>  23 <b>described this a little bit generally, but in</b>  24 <b>particular with the Osage Wind project, what were</b>  25 <b>your responsibilities?</b></p>	<p style="text-align: right;">Page 24</p> <p>1 <b>example, did you and Rob and Geoff present to the</b>  2 <b>board or how did those things kind of come to</b>  3 <b>their attention?</b>  4 MR. BALL: Objection to form.  5 THE WITNESS: We -- we would speak  6 with the board, present to the board, have  7 whatever conversations were needed based on the  8 decision that was being contemplated at the time.  9 <b>Q (By Ms. Blake) Did those happen at</b>  10 <b>regular board meetings usually?</b>  11 A We tended to call board meetings when  12 appropriate and needed. There were a lot -- I  13 mean, there were many, many board level decisions  14 being made, so it was a very active board.  15 <b>Q So it sounds like lots of special</b>  16 <b>meetings?</b>  17 A Yes. Yes.  18 <b>Q Who -- let's see -- and were most --</b>  19 <b>was this happening -- sorry, I'm trying to think</b>  20 <b>of a way to phrase this.</b>  21 <b>So Tradewind purchased -- Tradewind</b>  22 <b>purchased this project in August of 2013, correct?</b>  23 MR. BALL: Objection to form.  24 THE WITNESS: I can't confirm that  25 date. It sounds reasonable but I can't confirm</p>
<p style="text-align: right;">Page 23</p> <p>1 A To oversee my team as they diligenced  2 the project from a development perspective, to  3 make a recommendation ultimately to the board as  4 to whether or not it should be acquired and then  5 subsequently sold.  6 <b>Q And who -- what were the names of your</b>  7 <b>team members?</b>  8 A Aaron Weigel, Jenny Dean, Andrew  9 Landal, Kevin Walter. Those would be names that  10 -- Vicki Schumaucher.  11 <b>Q Did they all direct -- or did they all</b>  12 <b>report directly to you?</b>  13 A Yes.  14 <b>Q And while you were -- while you were</b>  15 <b>developing the project, who had final authority</b>  16 <b>regarding major decisions over the project? Like</b>  17 <b>if you were -- you mentioned that you were in</b>  18 <b>charge of design, things like that. Who</b>  19 <b>ultimately made those decisions?</b>  20 A The board made the ultimate decisions.  21 At Tradewind, Rob, Geoff and I would be the next  22 layer down in terms of making decisions that  23 didn't require board approval.  24 <b>Q And I'm not trying to be dumb here, but</b>  25 <b>how were those decision made? I guess, as an</b></p>	<p style="text-align: right;">Page 25</p> <p>1 that date.  2 <b>Q (By Ms. Blake) So were the -- was this</b>  3 <b>sort of a decision process before Tradewind</b>  4 <b>purchased the project from Wind Capital or after</b>  5 <b>they purchased the project from Wind Capital?</b>  6 MR. BALL: Objection. Form.  7 THE WITNESS: I don't quite  8 understand the question. Maybe you could try me  9 again.  10 <b>Q (By Ms. Blake) Yeah, for sure.</b>  11 <b>So you mentioned that there were major</b>  12 <b>decisions that were happening at the board level.</b>  13 <b>I'm just trying to understand if this was after</b>  14 <b>Tradewind entered the membership interest purchase</b>  15 <b>agreement or before?</b>  16 A The -- you're speaking of the MIPA  17 associated with the sale of the project to Enel or  18 the purchase of the project from Wind Capital?  19 <b>Q From Wind Capital.</b>  20 A From Wind Capital?  21 <b>Q Uh-huh.</b>  22 A The board would have been involved in  23 decisions leading up to the acquisition of the  24 project from Wind Capital and during the period of  25 ownership of Tradewind. While Tradewind owned the</p>



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1 Osage Wind project, the board would have been  
 2 actively involved in all those decisions.  
 3 Once it sold to Enel or -- we sold  
 4 projects to many companies around -- around the  
 5 country, then our relationship -- our  
 6 responsibilities would be governed by the  
 7 specifics of that purchase and sale agreement.  
 8 Sometimes it was just no support at all. You  
 9 know, it was just, here's the keys and they would  
 10 go on and do their business. In other cases we  
 11 would play the ongoing role to continue some level  
 12 of active development on the project on behalf of  
 13 the new owner.  
 14 And I can't tell you -- you know, I  
 15 think -- I can't tell you specifically what the  
 16 arrangement was on Osage. I just don't recall.  
 17 **Q That's fine. Thank you for**  
 18 **understanding my poorly-asked question.**  
 19 **So let me see, I'm just looking through**  
 20 **my outline real quickly.**  
 21 **So were you involved at all in helping**  
 22 **structure or negotiate the financing for ownership**  
 23 **transactions related to the Osage Wind Farm**  
 24 **project?**  
 25 MR. BALL: Objection. Form.

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1 THE WITNESS: Yeah. I don't  
 2 understand that question. Yeah.  
 3 **Q (By Ms. Blake) That's all right. I**  
 4 **can rephrase it.**  
 5 **Did you help -- did you help with**  
 6 **negotiating the membership interest purchase**  
 7 **agreement?**  
 8 MR. BALL: Objection to form.  
 9 THE WITNESS: Yes, I would have  
 10 been involved in the -- in that transaction.  
 11 Again, I wasn't typically point on negotiating --  
 12 at least on that project I don't recall being lead  
 13 negotiator. I would have been more supporting  
 14 that transaction. You're selling a development  
 15 asset, so the development team has to provide a  
 16 lot of content. Leases, various documents and  
 17 data that are necessary -- they're really assets  
 18 of the entity you're selling, so we were actively  
 19 involved, yes.  
 20 **Q (By Ms. Blake) And then what would**  
 21 **your role have been with regard to loan**  
 22 **agreements?**  
 23 MR. BALL: Objection. Form.  
 24 THE WITNESS: I don't recall being  
 25 involved in a loan agreement associated with the

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1 Osage Wind project.  
 2 **Q (By Ms. Blake) And then you sort of**  
 3 **already touched on this, but I'm going to ask it**  
 4 **maybe a little bit differently.**  
 5 **Did your responsibilities personally**  
 6 **change at all after Tradewind Energy bought Osage**  
 7 **Wind from Wind Capital Group in August of 2013?**  
 8 A Did my responsibilities change after we  
 9 bought the project from Wind Capital before we  
 10 sold it to Enel?  
 11 **Q Yes.**  
 12 A I don't recall them changing, no.  
 13 **Q Do you recall it being changed after**  
 14 **Tradewind sold the project to Enel?**  
 15 A Are you asking about my  
 16 responsibilities at Tradewind or my responsibility  
 17 -- or Tradewind's responsibilities to Enel as  
 18 buyer of the project?  
 19 **Q I'm talking about your responsibilities**  
 20 **with respect to the project. You, as in**  
 21 **Mr. Gilhousen. Not you as in Tradewind.**  
 22 A Tradewind's responsibilities, therefore  
 23 mine, would change upon the sale of the project to  
 24 Enel. Or -- when I say Enel, I'm meaning Enel  
 25 Kansas, or Enel -- whoever the entity was at Enel

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1 that bought the project. I don't recall which  
 2 entity that was. But, yes, those responsibilities  
 3 would have changed per contract when we sold the  
 4 project to Enel.  
 5 **Q And do you recall how your**  
 6 **responsibilities personally changed?**  
 7 A I don't specifically recall how those  
 8 would have changed. Typically, once we sell the  
 9 project we are no longer responsible for it. We  
 10 play a supporting role to a varying degree based  
 11 on what the owner, the new owner of the project  
 12 wants from us, which would be specified by  
 13 contract.  
 14 **Q Let's see. I'm just looking down my**  
 15 **outline.**  
 16 **Did you ever communicate with Steve**  
 17 **Willman about the Osage Wind project?**  
 18 A I'm certain I did, yes.  
 19 **Q What kinds of things would you**  
 20 **communicate about?**  
 21 A Development-related matters. He and  
 22 his team were actively involved in all legal  
 23 matters at -- virtually all legal matters at  
 24 Tradewind.  
 25 **Q And by "development matters," can you**

<p>Page 30</p> <p>1 give an example of -- some examples of what 2 development matters it would be? 3 A Real estate leases and/or acquisitions. 4 Q Is there anyone -- I'm sorry. I 5 interrupted. 6 A Go ahead. 7 Q Would permitting be included in that? 8 A Yes. 9 Q Did you ever communicate with Steve 10 Champagne about the Osage Wind project? 11 A Probably. Steve was -- I believe he 12 was general counsel at Enel a good portion of the 13 time that I was at Tradewind. 14 Q And do you have any recollection of how 15 frequently you might have communicated with him? 16 A I can't say. I don't recall. 17 Q Okay. 18 A There would have been a lot of contact 19 with Enel and their team, but as general counsel 20 he would have been involved. Yeah, I wouldn't 21 have had contact with him on a regular basis, but 22 I'm sure I conversed with him numerous times 23 during that time period. About what, I can't say 24 exactly. 25 Q That's totally fine.</p>	<p>Page 32</p> <p>1 engaged them before we bought the project or not, 2 or the timeline when we engaged him, but I know he 3 was actively involved in the project. 4 Q Do you -- do you remember who typically 5 would hire your outside counsel? 6 MR. BALL: Objection to form. 7 THE WITNESS: Rob was typically 8 involved in any engagements with any legal 9 counsel. I may from time to time be involved as 10 well as Geoff and other staff, but Rob was 11 typically involved in that. 12 Q (By Ms. Blake) Okay. So you -- you 13 mentioned before that for your projects you would 14 develop a permitting matrix. Do I have that 15 correct? 16 A That would be typical, yes. I can't 17 tell you whether we did that from day one of the 18 company or that's something that evolved as a way 19 to manage the permitting process over time. But 20 typically, at least in the sale documentation or 21 purchase documentation of an asset, there would be 22 a permitting matrix included. 23 Q And was counsel involved in developing 24 that? 25 A Yes.</p>
<p>Page 31</p> <p>1 Do you happen to recall how frequently 2 you communicated with Mr. Willman? 3 A Regularly. I mean, multiple times a 4 week, I would suspect. 5 Q Did you communicate with any other 6 outside counsel other than Mr. Willman about the 7 Osage Wind project? 8 A Lynn Slade and his legal team. There 9 may have been other law firms involved. Probably 10 were, I can't give you a name, but there's often 11 multiple law firms and many lawyers involved in 12 any one of these projects. 13 Q What sorts of things did you 14 communicate about with Mr. Slade? 15 A My recollection is that it was 16 primarily around Native American law since we 17 hadn't developed in an area where there was any 18 Native American tribal activities. 19 Q Do you recall who hired Mr. Slade and 20 his law firm? 21 A I do not recall. It would have been -- 22 Tradewind retained him or the project entity, 23 Osage Wind, LLC, would have had him -- would have 24 retained him or hired him, or paid him. I'm not 25 -- I can't recall if Wind Capital Group had</p>	<p>Page 33</p> <p>1 Q Was there any guidance for how that was 2 done project to project? 3 MR. BALL: Object to the form. 4 THE WITNESS: Yes. There would 5 have been guidance by counsel. 6 Q (By Ms. Blake) So the guidance came 7 from counsel? There wasn't anything Tradewind 8 developed on it's own? 9 A It was a collaboration, typically. I 10 guess I would describe it as what I would deem as 11 kind of an industry standard approach to trying to 12 navigate the permitting process. 13 Q Was there -- how did you know which 14 permits to look into, I guess is my question? 15 A We would primarily work with legal 16 counsel to develop those -- that list of permits. 17 Q Okay. And then who at Tradewind was 18 usually in charge of that? 19 A It would have been the permitting 20 environmental team and the developer assigned to 21 the project. Really, the project manager. I use 22 the term developer. It's a broader set of 23 responsibilities than that of a project manager. 24 But the permitting environmental team would have 25 been point on that process.</p>

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1 **Q Do you remember who that was for the**  
2 **Osage Wind project?**  
3 A I do not remember who specifically --  
4 whether there was multiple staff members involved,  
5 but I know -- Jenny Dean and Aaron Weigel would  
6 have been two people actively involved in the  
7 permitting process.  
8 **Q Did Enel have any role in the**  
9 **permitting process?**  
10 MR. BALL: Objection. Form.  
11 THE WITNESS: I can't recall.  
12 They would certainly be -- they would do, you  
13 know, due diligence on any asset they were going  
14 to purchase from us. So, yes, their team would be  
15 aware of everything, you know, in advance of  
16 purchasing the project. As evidenced by the MIPA,  
17 you can see what's in those documents. They're  
18 pretty detailed.  
19 **Q (By Ms. Blake) Right. Let see. I**  
20 **think -- I'm actually going to go ahead and ask**  
21 **you some questions about the methods.**  
22 [Julie, if you wouldn't mind pulling up  
23 Exhibit Number 78.] So this document has  
24 previously been entered as Exhibit Number 78.  
25 It's Bates stamped Osage Wind 8021248. And this

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1 is the membership interest purchase agreement  
2 between Tradewind Energy and Wind Capital Group  
3 from August 22nd, 2013.  
4 Have you seen this agreement before?  
5 THE WITNESS: Can I look at that  
6 document on your computer? Because it's pretty  
7 small.  
8 MR. MAY: You know what, you may  
9 be able to show it on the other.  
10 THE WITNESS: I logged off.  
11 MR. MAY: Are you logged off? So  
12 let's see here.  
13 THE WITNESS: I don't mean to be  
14 coy. I can't -- I take legal documents pretty  
15 seriously, so I think this is probably the MIPA  
16 for that transaction. I guess I would have to  
17 take your word on it without having access to my  
18 files and cross-checking that it is indeed the  
19 execution copy of the MIPA for this transaction,  
20 so I think it probably is the document. But,  
21 again, I can't confirm. I don't mean to be coy;  
22 I'm just trying to be thorough.  
23 **Q (By Ms. Blake) No worries. I**  
24 **appreciate it.**  
25 I'm just going to ask you a few

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1 questions about this document really quick. So  
2 like I said before, let me know if there's  
3 something more you want to read or you want us to  
4 scroll to a part or need us to slow down. I'm  
5 going to.  
6 So do you recall who from Tradewind was  
7 involved in negotiating this transaction?  
8 A It typically would have been  
9 Mr. Freeman, but Geoff Coventry and myself would  
10 have supported him as needed.  
11 **Q And then if you -- [Julie, can you go**  
12 **to Page 11 of the document. This should be Bates**  
13 **stamped Osage Wind 021258.]**  
14 So if we look down at Paragraph 8, so  
15 this is Section 2.4. And Section 2.4 is --  
16 [Actually, sorry. Julie, if you could scroll up  
17 so he could see the header of this section.] It  
18 says Conditions Precedent To The Obligations Of  
19 Purchaser At The Closing.  
20 So if you go back down to section -- or  
21 Paragraph H, it says, "The board of directors of  
22 purchaser and EGP shall have approved this  
23 transaction in all respects." Can you see that?  
24 A I can.  
25 **Q Okay. Great.**

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1 So I'll represent to you that EGP is  
2 defined on Page 3 of this agreement as Enel Green  
3 Power North America. And then, as you know, the  
4 purchaser is Tradewind Energy. Do you happen to  
5 recall at all who was on the board of directors at  
6 EGPNA during this -- to approve this transaction?  
7 MR. BALL: Objection to form.  
8 THE WITNESS: I can't tell you  
9 with certainty tell you which combination of board  
10 members were on the board at that time. I gave  
11 you the names of -- that I could recall were  
12 Enel/EGP board members.  
13 **Q (By Ms. Blake) And if you can't**  
14 **recall, that is totally fine.**  
15 A Yeah. Mike Storch was probably a board  
16 member at the time and I know I shouldn't  
17 speculate, but I think he was on the board and I  
18 can't remember who the other board member was.  
19 That should be easy to confirm.  
20 **Q And you are -- just to be clear right**  
21 **now, you're talking about the board of Tradewind,**  
22 **correct?**  
23 A Yes.  
24 **Q Do you remember who any of the non Enel**  
25 **people were on the board at that time for**

<p>Page 38</p> <p>1 Tradewind?</p> <p>2 A I can't give you the specific makeup.</p> <p>3 We had various combinations of investors. Enel</p> <p>4 would nominate board members over time.</p> <p>5 Q Okay. That is totally fine. Let's</p> <p>6 see.</p> <p>7 Was Enel involved at all, if you know,</p> <p>8 in drafting this agreement?</p> <p>9 A I don't recall.</p> <p>10 Q All right.</p> <p>11 [Let's scroll down, Julie, to Page</p> <p>12 21293.] And this is, again, a form of a guaranty</p> <p>13 by Enel Green Power North America on behalf of</p> <p>14 Tradewind. Do you recall why EGPNA in particular</p> <p>15 was Tradewind's guarantor?</p> <p>16 A It would have been because they have</p> <p>17 the larger balance sheet than Tradewind.</p> <p>18 Q And did EGPNA or Enel Kansas have any</p> <p>19 previous involvement in the Osage Wind project</p> <p>20 before this agreement?</p> <p>21 A They would have had involvement in the</p> <p>22 project through the board and through their staff</p> <p>23 dilligencing the project from before we even -- I</p> <p>24 suspect before we bought it. No. Yeah, the board</p> <p>25 would have been aware of the project before we</p>	<p>Page 40</p> <p>1 Do you have an understanding of why no</p> <p>2 Native American tribe was considered a</p> <p>3 governmental authority under this agreement?</p> <p>4 A I do not.</p> <p>5 Q Okay. Did Tradewind ever make an</p> <p>6 independent determination as to the rights of</p> <p>7 Native American tribes in relation to the Osage</p> <p>8 Wind project?</p> <p>9 MR. BALL: Objection to form.</p> <p>10 THE WITNESS: Can you ask that</p> <p>11 question again, please?</p> <p>12 Q (By Ms. Blake) Certainly I can.</p> <p>13 Did Tradewind ever make an independent</p> <p>14 inquiry into -- into the rights of a Native</p> <p>15 American tribe in relation to the Osage Wind</p> <p>16 project?</p> <p>17 A Independent meaning?</p> <p>18 Q Basically did you -- did Tradewind on</p> <p>19 its own behalf ask anybody to make this</p> <p>20 determination or make an inquiry into those</p> <p>21 rights?</p> <p>22 A Yes. We would have -- hold on one</p> <p>23 second here. Are you guys there?</p> <p>24 Q Uh-huh. We're still here.</p> <p>25 A I had a phone call come in.</p>
<p>Page 39</p> <p>1 bought it, so they would have had involvement via</p> <p>2 their ownership in Tradewind prior to even our</p> <p>3 ownership.</p> <p>4 Q Okay. Do you happen to know if an</p> <p>5 executed version of this guaranty exists?</p> <p>6 A I do not.</p> <p>7 Q Okay. All right.</p> <p>8 [Julie, can we go back to Page 4?]</p> <p>9 And I'm sorry, Mr. Gilhousen. I did</p> <p>10 not mean to make us all dizzy by going back and</p> <p>11 forth through here.</p> <p>12 A You're good.</p> <p>13 Q This page will be Bates stamp 21251.</p> <p>14 So on this page, it defines governmental authority</p> <p>15 and I'll just read part of it for you. It says,</p> <p>16 "For the avoidance of doubt" -- oh, sorry. Do you</p> <p>17 see where that is, first?</p> <p>18 A The definition of governmental</p> <p>19 authorities?</p> <p>20 Q Yeah. It's right there in the middle</p> <p>21 of the page. Okay.</p> <p>22 It says, "For the avoidance of doubt,</p> <p>23 no Native American tribe, nation, entity, body,</p> <p>24 organization, et cetera, shall be considered a</p> <p>25 governmental authority for any purpose hereunder."</p>	<p>Page 41</p> <p>1 Q No problem.</p> <p>2 A I won't take any unless it's my mom.</p> <p>3 Let's see. We would have relied on</p> <p>4 counsel. So I'm certain we engaged counsel with</p> <p>5 respect to what permits and authorizations we need</p> <p>6 -- we needed. And I can't recall the status of</p> <p>7 the county permitting on this project at the time,</p> <p>8 whether it had been permitted when we acquired it</p> <p>9 or not.</p> <p>10 Q And would that determination be</p> <p>11 something that would have gone to the board of</p> <p>12 directors?</p> <p>13 MR. BALL: Objection. Form.</p> <p>14 THE WITNESS: The status of the</p> <p>15 permitting of the project would have been part of</p> <p>16 the due diligence that the buyer would have done</p> <p>17 and the board would typically want to know whether</p> <p>18 we have or don't have the permits needed for the</p> <p>19 project.</p> <p>20 Q (By Ms. Blake) Makes sense.</p> <p>21 Do you have any knowledge as to what</p> <p>22 entity would have included this term about</p> <p>23 governmental authority in the agreement?</p> <p>24 A I do not.</p> <p>25 Q Do you know who was responsible for</p>



<p>Page 42</p> <p>1 drafting this definition?</p> <p>2 A I do not.</p> <p>3 Q And then I guess what about the</p> <p>4 agreement in general, do you know who was</p> <p>5 primarily responsible for drafting this agreement?</p> <p>6 MR. BALL: Objection. Asked and</p> <p>7 answered.</p> <p>8 THE WITNESS: When you say</p> <p>9 "draft," are you speaking of the original drafter</p> <p>10 of the form or the drafter during the negotiation?</p> <p>11 Q (By Ms. Blake) Yeah, the form. Do you</p> <p>12 know where the form came from?</p> <p>13 A I don't know where the form came from.</p> <p>14 Q Okay. Let's see here. [Julie, can we</p> <p>15 go to 21253.] We're going to look at the</p> <p>16 definition of permit. It's right there in the</p> <p>17 middle of the page. Can you see that okay,</p> <p>18 Mr. Gilhousen?</p> <p>19 A Yep.</p> <p>20 Q So it's defined as, "Any license,</p> <p>21 permit, certificate, order, consent," et cetera,</p> <p>22 "required under or issued pursuant to any</p> <p>23 environmental law or by any governmental</p> <p>24 authority."</p> <p>25 Do you agree that this definition of</p>	<p>Page 44</p> <p>1 Wind Capital Group nor EGPNA had a permit from the</p> <p>2 Osage Nation to mine the Osage Mineral estate?</p> <p>3 A To my knowledge, we didn't have a</p> <p>4 permit or to my knowledge we weren't mining. So,</p> <p>5 no.</p> <p>6 Q Let's see. Sorry. I'm going to</p> <p>7 just --</p> <p>8 A So your prior question, not the most</p> <p>9 recent one, but the prior one about the document,</p> <p>10 I'm not even sure if you were talking about the</p> <p>11 representations or warranties. What section of</p> <p>12 the document you're referring to.</p> <p>13 Q Oh, yeah.</p> <p>14 A Obviously, before we would sign and</p> <p>15 execute a document we would do our best to be in</p> <p>16 compliance with the document we're signing. So if</p> <p>17 we had to make a REP, we would carefully read the</p> <p>18 REP and decide whether we could make it or not.</p> <p>19 Q Oh, for sure. Just the -- under this</p> <p>20 agreement the company is Osage Wind, and I think</p> <p>21 this is you buying it from Wind Capital Group.</p> <p>22 A Okay. Right. Thank you for</p> <p>23 clarification.</p> <p>24 Q Yeah. No problem.</p> <p>25 A Actually, I thought this was the sale</p>
<p>Page 43</p> <p>1 permit would exclude permits from the Osage</p> <p>2 Minerals Council just because of the operation of</p> <p>3 the definition of governmental authority?</p> <p>4 A Without studying the document more</p> <p>5 thoroughly, I would be speculating, but it appears</p> <p>6 that's the case.</p> <p>7 Q Do you know who made the decision to</p> <p>8 exclude permits from the Osage Minerals Council</p> <p>9 from the definition of permits in this agreement?</p> <p>10 A I do not.</p> <p>11 Q Let's see. [Julie, can you put up Page</p> <p>12 21268.] So let's see. 21268, Osage Wind makes a</p> <p>13 representation in Paragraph 3 that says, "The</p> <p>14 company is in compliance and all materials are --</p> <p>15 with all of the permits to the extent obtained and</p> <p>16 has paid all amounts currently due under all</p> <p>17 obtained permits."</p> <p>18 Did anyone at Tradewind or on the board</p> <p>19 of directors prior to the approval of this</p> <p>20 agreement undertake any analysis to determine that</p> <p>21 this statement was true?</p> <p>22 A I don't recall.</p> <p>23 Q Okay. And that as of the signing of</p> <p>24 this agreement which was in August 2013, is it</p> <p>25 true that neither Tradewind nor Osage Wind nor</p>	<p>Page 45</p> <p>1 -- I was thinking this was the sale MIPA; not the</p> <p>2 buying MIPA. I think my answer applies still, but</p> <p>3 I --</p> <p>4 Q Do you want me to reask the question?</p> <p>5 A No, I don't think so.</p> <p>6 Q Okay. Let's see. Yeah, all the</p> <p>7 question was -- would be if -- so the company</p> <p>8 representing that they're in compliance with all</p> <p>9 of their permits to the extent obtained, would</p> <p>10 Tradewind have looked into that?</p> <p>11 A Yes.</p> <p>12 Q And let's see, what would Tradewind</p> <p>13 have done as part of that process to be</p> <p>14 comfortable with that representation?</p> <p>15 A That the seller has all the permits?</p> <p>16 Q Exactly. Uh-huh.</p> <p>17 A We would have spoken to the seller and</p> <p>18 we would have reviewed the documents they have.</p> <p>19 And depending on the documentation, we may or may</p> <p>20 not engage directly with whoever that jurisdiction</p> <p>21 is that might validate or not validate whether or</p> <p>22 not we needed a permit or had the permit</p> <p>23 necessary. But it depended -- it depends upon the</p> <p>24 documentation that we have from the seller.</p> <p>25 Q And would counsel have been involved in</p>

<p>Page 48</p> <p>1 that process?</p> <p>2 A Yes.</p> <p>3 Q Okay. All right. So now we'll go to</p> <p>4 Page 10. [Julie, this is Section 2.3 of the</p> <p>5 agreement. Bates stamped 21257. And it's the</p> <p>6 Closing.]</p> <p>7 And it says that "The closing..." --</p> <p>8 let's see what we're looking at -- let's see. The</p> <p>9 third line. "...will happen immediately following</p> <p>10 the satisfaction or valid waiver of all of the</p> <p>11 conditions set forth in Sections 2.4</p> <p>12 and 2.5."</p> <p>13 Do you recall when this transaction</p> <p>14 closed?</p> <p>15 A I do not.</p> <p>16 Q Okay. That is totally fine.</p> <p>17 Let's see. Okay. So we're going to go</p> <p>18 now to the MIPA from September 2014.</p> <p>19 [Julie, if you could pull up Exhibit</p> <p>20 Number 79. This was previously marked as</p> <p>21 Defendant's Exhibit Number 79 and it's Bates</p> <p>22 stamped Osage Wind 21119.]</p> <p>23 And Mr. Gilhousen, we've been going for</p> <p>24 about an hour now, so if you need a break after</p> <p>25 this, you know, let me know.</p>	<p>Page 48</p> <p>1 know if those amendments were approved by Osage</p> <p>2 Wind's board?</p> <p>3 MR. BALL: Objection to form.</p> <p>4 THE WITNESS: I don't know.</p> <p>5 Q (By Ms. Blake) Do you know if</p> <p>6 amendments of that type would typically be</p> <p>7 approved by Tradewind's board?</p> <p>8 A I wouldn't use the word typical. They</p> <p>9 may or may not have been. It depends on the</p> <p>10 nature of the amendment.</p> <p>11 Q And then I guess speaking of the nature</p> <p>12 of the amendment, do you have any recollection why</p> <p>13 the MIPA was amended on October 25th, 2013?</p> <p>14 A I do not recall.</p> <p>15 Q What about the November 2nd, 2013</p> <p>16 amendment?</p> <p>17 A The same answer.</p> <p>18 Q Okay. And I'm going to go for the</p> <p>19 other one. What about March 14th, 2014?</p> <p>20 A Yeah, the same answer. I don't recall.</p> <p>21 Q And I was going to ask you the last</p> <p>22 one, April 15th, 2014.</p> <p>23 A Yeah. I don't recall.</p> <p>24 Q Okay. No problem.</p> <p>25 Let's see. [Julie, if you can go to</p>
<p>Page 47</p> <p>1 A Okay.</p> <p>2 Q So this is the agreement where</p> <p>3 Tradewind sold the project. Do you remember</p> <p>4 seeing this agreement before?</p> <p>5 A The same answer as before. I would</p> <p>6 have to take your word that this is that</p> <p>7 agreement, but there was a MIPA between Tradewind</p> <p>8 and Enel selling them the Osage Wind project.</p> <p>9 Q Do you happen to know who the members</p> <p>10 of Enel Kansas were at this time?</p> <p>11 A I do not know.</p> <p>12 Q Okay. And did Osage Wind have any</p> <p>13 employees?</p> <p>14 A I am not -- not to my knowledge.</p> <p>15 Q And do you happen to know -- and I'm</p> <p>16 sorry if I asked you this before, but do you</p> <p>17 happen to know who was on Tradewind's board during</p> <p>18 this transaction?</p> <p>19 A No.</p> <p>20 Q [Julie, if you'll scroll down to</p> <p>21 21123.] So in the preamble, let me get to the</p> <p>22 right spot for you, in the fourth "Whereas"</p> <p>23 paragraph, it says that the -- the first MIPA was</p> <p>24 amended on October 25th, 2013; November 2nd, 2013;</p> <p>25 March 14th, 2014; and April 15th, 2014. Do you</p>	<p>Page 49</p> <p>1 Page 9. So this should be Bates stamped 21127.]</p> <p>2 So we're going to look at the</p> <p>3 definition of governmental authority again. And</p> <p>4 then can you see that okay?</p> <p>5 A Yes.</p> <p>6 Q Okay. It says that, "Governmental</p> <p>7 authority is any national, tribal, state, or local</p> <p>8 government, whether domestic or foreign, any</p> <p>9 subdivision thereof," et cetera, et cetera.</p> <p>10 Do you agree that this definition would</p> <p>11 include the Osage Nation?</p> <p>12 A It appears that way if they're -- if</p> <p>13 the reference to tribal would pick them up. It</p> <p>14 seems that's the case.</p> <p>15 Q Yeah. So do you have an understanding</p> <p>16 for why tribal governments and their</p> <p>17 instrumentalities are included in this definition</p> <p>18 of governmental authority?</p> <p>19 A I do not know.</p> <p>20 Q Okay. And then do you have any</p> <p>21 recollection of which entity included -- included</p> <p>22 this provision?</p> <p>23 A Who -- the same answer as -- I guess my</p> <p>24 comment about this document is as the prior one, I</p> <p>25 don't know the origin of the form of this document</p>



<p>Page 50</p> <p>1 and so I can't -- or the history of the</p> <p>2 negotiations well enough to say if that language</p> <p>3 was there initially or it was added or negotiated.</p> <p>4 <b>Q No worries. Let's see. Just taking a</b></p> <p>5 <b>look down my outline really quickly.</b></p> <p>6 <b>Do you know if there was ever a</b></p> <p>7 <b>determination by Tradewind about including tribal</b></p> <p>8 <b>governments in this definition?</b></p> <p>9 A I do not.</p> <p>10 <b>Q All right. I am done actually with</b></p> <p>11 <b>this exhibit, so we can take a break now or we can</b></p> <p>12 <b>just continue on to the next one. It's up to you,</b></p> <p>13 <b>Mr. Gilhousen.</b></p> <p>14 A Let's keep going.</p> <p>15 <b>Q Okay.</b></p> <p>16 <b>All right. [Julie, can you pull up</b></p> <p>17 <b>what's previously been entered as Exhibit 194.</b></p> <p>18 <b>And this one is Bates stamped Osage Wind 040156.]</b></p> <p>19 <b>This is the amended and restated Osage</b></p> <p>20 <b>Project Loan Agreement among Tradewind Energy and</b></p> <p>21 <b>Enel Kansas and EGPNA dated April 14th, 2014.</b></p> <p>22 <b>So the preamble mentions that - sorry?</b></p> <p>23 A Sorry. That was just a thing on my</p> <p>24 phone popping up.</p> <p>25 <b>Q No problem.</b></p>	<p>Page 52</p> <p>1 <b>you recall if Osage Wind had any employees at this</b></p> <p>2 <b>time?</b></p> <p>3 A I'm not -- I don't know the answer to</p> <p>4 that.</p> <p>5 <b>Q Do you know if Osage Wind ever had</b></p> <p>6 <b>employees?</b></p> <p>7 MR. BALL: Objection to form.</p> <p>8 THE WITNESS: I'm unaware of</p> <p>9 whether they did or did not.</p> <p>10 <b>Q (By Ms. Blake) Okay. Did Osage Wind</b></p> <p>11 <b>have employees when Tradewind owned Osage Wind?</b></p> <p>12 A I do not believe so.</p> <p>13 <b>Q Did Osage Wind have any officers at the</b></p> <p>14 <b>time that this agreement was negotiated?</b></p> <p>15 A I don't recall.</p> <p>16 <b>Q Okay.</b></p> <p>17 <b>[Julie, if you could go to Page 40162.]</b></p> <p>18 <b>So in Section 3.2 -- this is Lender</b></p> <p>19 <b>Approval Rights. And it says that, "Tradewind</b></p> <p>20 <b>shall not on behalf of Osage Wind or otherwise</b></p> <p>21 <b>allow Osage Wind to undertake any of the following</b></p> <p>22 <b>actions relating to the Osage project without</b></p> <p>23 <b>prior written approval of Enel Kansas."</b></p> <p>24 <b>What would it mean for Tradewind to</b></p> <p>25 <b>allow Osage Wind to take an action?</b></p>
<p>Page 51</p> <p>1 <b>So the preamble mentions that Enel</b></p> <p>2 <b>Kansas and Tradewind are parties to an Osage</b></p> <p>3 <b>project loan agreement dated November 21st, 2013,</b></p> <p>4 <b>and then on this loan modification agreement dated</b></p> <p>5 <b>March 14th, 2014. And that is in -- that's in the</b></p> <p>6 <b>second "Whereas" paragraph. Do you see kind of</b></p> <p>7 <b>what I'm talking about?</b></p> <p>8 A Yeah, I see the section you're</p> <p>9 referring to.</p> <p>10 <b>Q Okay. Do you know why the Osage</b></p> <p>11 <b>project loan agreement was modified on</b></p> <p>12 <b>March 14th, 2014?</b></p> <p>13 A I don't recall specifically.</p> <p>14 <b>Q And do you recall why it was modified</b></p> <p>15 <b>again with this agreement on April 14th, 2014?</b></p> <p>16 A Unfortunately I don't recall.</p> <p>17 <b>Q That's okay. Let's see.</b></p> <p>18 <b>Do you recall if -- let's see. Do you</b></p> <p>19 <b>know if Enel Kansas and EGPNA's responsibilities</b></p> <p>20 <b>and rights under the November 21st, 2013 and the</b></p> <p>21 <b>March 14th, 2014 agreements are the same as what</b></p> <p>22 <b>is in this one, as in this agreement?</b></p> <p>23 A I don't.</p> <p>24 MR. BALL: Objection. Form.</p> <p>25 <b>Q (By Ms. Blake) That's fine. And do</b></p>	<p>Page 53</p> <p>1 A I'm not sure how to answer that</p> <p>2 question.</p> <p>3 MR. BALL: Objection. Form.</p> <p>4 THE WITNESS: Maybe you can ask</p> <p>5 that differently.</p> <p>6 <b>Q (By Ms. Blake) So how -- I guess the</b></p> <p>7 <b>question would be why would -- what would be</b></p> <p>8 <b>required for Tradewind to allow Osage Wind to take</b></p> <p>9 <b>an action?</b></p> <p>10 MR. BALL: Objection. Form.</p> <p>11 THE WITNESS: It appears, based on</p> <p>12 what's in front of me here, that board consent</p> <p>13 would be needed for certain actions.</p> <p>14 <b>Q (By Ms. Blake) Okay. Thank you. That</b></p> <p>15 <b>is helpful.</b></p> <p>16 <b>[Julie, can you scroll down to</b></p> <p>17 <b>Paragraph P.]</b></p> <p>18 <b>So one of the actions in paragraph --</b></p> <p>19 <b>this is Paragraph P, again. It says, "Issuing any</b></p> <p>20 <b>limited or full notices to proceed under any</b></p> <p>21 <b>construction contract."</b></p> <p>22 <b>Do you know what a limited notice to</b></p> <p>23 <b>proceed is?</b></p> <p>24 A The industry standard would be as the</p> <p>25 word implies, you're giving a contractor some</p>

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1 limited notice to move forward with a particular  
 2 phase of a construction project or actions  
 3 associated with a construction project, which is a  
 4 partial -- a partial release for them to do some  
 5 level of work, or engineering. I mean, it could  
 6 be purchasing a piece of equipment that's along  
 7 the item. It could be starting more detailed  
 8 engineering. It could be releasing them to start  
 9 moving some dirt. It could be a whole host of  
 10 things that would fall under a limited notice to  
 11 proceed. They're not uncommon in the construction  
 12 business to my -- that's been my experience.

13 **Q Okay. And I'm asking because I'm not a**  
 14 **civil engineer. It's helpful to know exactly what**  
 15 **we're talking about here. So how is that**  
 16 **different from a full notice to proceed?**

17 A A full notice to proceed would  
 18 typically -- again, I'm not speaking specific to  
 19 the Osage project, but it would be they're given a  
 20 full green light to execute under the construction  
 21 contract with no restrictions. They can just  
 22 proceed according to the contract.

23 **Q Okay. And so is the purpose of the**  
 24 **limited notice to proceed, are those financial or**  
 25 **what would be the purpose?**

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1 MR. BALL: Objection to form.  
 2 THE WITNESS: Again, this is  
 3 industry -- based on my industry experience it  
 4 could be a whole host -- anything under the sun  
 5 could cause a limited notice to proceed.  
 6 Scheduled deadlines, financing, equipment lead  
 7 times, scarcity of resources. A whole bunch of  
 8 different things could cause that. It's very  
 9 common.

10 **Q (By Ms. Blake) Yeah. That's helpful.**  
 11 **Thank you.**

12 **So with respect to Osage Wind**  
 13 **specifically, who under this contract would have**  
 14 **requested written notice -- would have requested**  
 15 **written approval from Enel for notices to proceed?**

16 MR. BALL: Objection. Form.  
 17 THE WITNESS: It would have been  
 18 one of the -- either gone through the board or  
 19 through one of the senior staff and/or executives  
 20 at the business. So it could have been Rob,  
 21 Geoff, me, one of the key department heads. It  
 22 could have come from various people.

23 **Q (By Ms. Blake) And who at Enel Kansas**  
 24 **would you have contacted for the written approval?**  
 25 A Typically it would go through -- it

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1 would have gone through the board. But at various  
 2 times we had different points of contact at Enel,  
 3 whether it was their general counsel or their  
 4 project lead or one of our board members. I can't  
 5 recall specifically at this point in time who  
 6 would have been the point person on their side for  
 7 the project.

8 **Q Okay. And sorry, when you say, "go**  
 9 **through the board" what do you mean?**

10 A Say it again.  
 11 **Q When you say, "go through the board,"**  
 12 **are you talking about --**

13 A If there was a board level decision  
 14 necessary, we would have had to take it through  
 15 the board to get that approval, to make that  
 16 request of Enel.

17 **Q Okay. I'm sorry. I'm just trying to**  
 18 **make sure I understand. So you would take it to**  
 19 **the board to -- to get -- to approve taking the**  
 20 **request to Enel? Or to--**

21 A Well, Enel was on the board, so the  
 22 board could provide that authorization. Or we  
 23 could have gone -- depending on the circumstances,  
 24 we could have gone directly to Enel, one of the  
 25 staff, and they could have -- to make that request

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1 and gotten the approval. It could have gone  
 2 different channels to get that written  
 3 authorization.

4 **Q Okay. And as far as the different**  
 5 **channels, was that based on the subject matter**  
 6 **usually?**

7 A It could have been the subject matter,  
 8 it could have been point in time. I would just be  
 9 speculating on why we would go one channel or the  
 10 another. But there were different people in Enel  
 11 that had lead -- kind of a lead point position on  
 12 a particular project. So it really could have  
 13 gone through any different channel.

14 **Q What about permitting issues in**  
 15 **particular?**

16 MR. BALL: Objection to form.  
 17 THE WITNESS: As I said earlier,  
 18 our permitting environmental department would have  
 19 taken lead along with support of counsel on  
 20 permitting-related matters. I can't recall any  
 21 specifics with respect to this project or what  
 22 channel they worked through or if there were any  
 23 requests for consent.

24 **Q (By Ms. Blake) Okay. Let's see. And**  
 25 **sorry I jumped ahead a little bit, but the reason**

<p style="text-align: right;">Page 58</p> <p>1 I asked about permitting -- [Julie, if you could</p> <p>2 scroll up, please. Oh, sorry. Just to Paragraph</p> <p>3 J.]</p> <p>4 And so one of the things that requires</p> <p>5 written approval under this contract in Paragraph</p> <p>6 J is "Finalizing any material permit except where</p> <p>7 not practicable." As, for example, a fee has</p> <p>8 already been submitted or (inaudible) are</p> <p>9 automatic.</p> <p>10 Do you know how written approval would</p> <p>11 have been obtained for these material permits in</p> <p>12 Paragraph J?</p> <p>13 A The same answer as before. It could</p> <p>14 have gone through multiple channels.</p> <p>15 Q Okay. No problem. And do you have --</p> <p>16 so material isn't defined in this -- and it's not</p> <p>17 a defined term. Do you have any idea what a</p> <p>18 material permit would have been under this</p> <p>19 contract?</p> <p>20 MR. BALL: Objection to form.</p> <p>21 THE WITNESS: That's a judgment</p> <p>22 call. I can't -- it's -- the reader is going to</p> <p>23 have to make their own definition since it's not a</p> <p>24 defined term. I guess it's self-evident.</p> <p>25 Q (By Ms. Blake) As the chief</p>	<p style="text-align: right;">Page 60</p> <p>1 that without prior or written approval from Enel</p> <p>2 Kansas?</p> <p>3 A Again, I can't say whether that's a</p> <p>4 material permit or not. So it's hard to answer</p> <p>5 the question because I believe this language</p> <p>6 refers to material permits requiring consent from</p> <p>7 Enel. I just -- I can't speculate whether or not</p> <p>8 they would have to provide consent.</p> <p>9 Q No problem. So let's take a look at</p> <p>10 Paragraph O. It's on the same page, just a little</p> <p>11 farther down. Paragraph O prohibits Tradewind</p> <p>12 from allowing Osage Wind to submit comments with</p> <p>13 respect to any permit without prior written</p> <p>14 approval of Enel Kansas. Do you see Paragraph O?</p> <p>15 A Yeah.</p> <p>16 Q Do you know why a lender would want to</p> <p>17 provide prior approval for comments submitted with</p> <p>18 respect to permits?</p> <p>19 MR. BALL: Objection to form.</p> <p>20 THE WITNESS: Typically, it would</p> <p>21 be their desire to make sure they understand</p> <p>22 anything and everything that could affect the</p> <p>23 security and to have -- the security to their</p> <p>24 loan. They're lending money. The assets are</p> <p>25 typically security. So they -- this is -- this</p>
<p style="text-align: right;">Page 59</p> <p>1 development officer, what kinds of things would</p> <p>2 you consider to be material permits?</p> <p>3 A A conditional use permit or special use</p> <p>4 permit is a good example of a material permit.</p> <p>5 Q Okay. And was there any kind of</p> <p>6 process at Tradewind for reviewing permits to</p> <p>7 determine if they were material?</p> <p>8 A A permit matrix and that process of</p> <p>9 discussing what all permits we thought we needed,</p> <p>10 and discussions with counsel. Yeah, if there was</p> <p>11 anything that was on that list that was material</p> <p>12 that we didn't have, then we would be focused on</p> <p>13 those to make sure we get them.</p> <p>14 Q Okay. Let's see. Would a lease from</p> <p>15 the Osage Minerals Council be considered a</p> <p>16 material permit?</p> <p>17 MR. BALL: Objection to form.</p> <p>18 THE WITNESS: I can't say without</p> <p>19 -- I've never seen a lease from the Mineral</p> <p>20 Council, so I can't say.</p> <p>21 Q (By Ms. Blake) No problem.</p> <p>22 Let's see. So based on this paragraph,</p> <p>23 Paragraph J, is it true that if Osage Wind decided</p> <p>24 to get a permit from the Osage Nation or the Osage</p> <p>25 Minerals Council, Tradewind could not have done</p>	<p style="text-align: right;">Page 61</p> <p>1 would be -- I can't speak to the specifics of this</p> <p>2 loan document, but my experience tells me that it</p> <p>3 would be -- they're protecting their interest as</p> <p>4 lender, and the assets that securitize the loan.</p> <p>5 Q (By Ms. Blake) Let's see. Sorry. I'm</p> <p>6 just seeing what other things we can get through</p> <p>7 here. I think we're done with this.</p> <p>8 [Julie, if you could pull up Exhibit</p> <p>9 Number 195. So this one is Bates stamped Osage</p> <p>10 Wind 014868. Once we have it up.]</p> <p>11 And it's a letter agreement to be</p> <p>12 amended and restated of Osage Project loan</p> <p>13 agreement among Tradewind Energy, Enel Kansas and</p> <p>14 EPGNA. And it's dated April 14th, 2014. Were you</p> <p>15 involved in the negotiation of this document at</p> <p>16 all?</p> <p>17 A I don't recall.</p> <p>18 A Okay. Let's see. In Paragraph 1 --</p> <p>19 [Julie, can you scroll down? There are numbered</p> <p>20 paragraphs at the bottom of this page. There we</p> <p>21 go. Oops -- at the bottom of the page. There we</p> <p>22 go.]</p> <p>23 So Paragraph Number 1 right there</p> <p>24 defines acquisition as "TWE, Tradewind, will</p> <p>25 acquire Osage with the proceeds from the Osage</p>

<p>Page 62</p> <p>1 loan."</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q Okay. And then -- [Julie, if you can</p> <p>5 scroll up just a little bit. Two paragraphs above</p> <p>6 that. In that paragraph starting with</p> <p>7 "Contemporaneous."]</p> <p>8 So the Osage loan is defined as the</p> <p>9 document that we just looked at as Exhibit Number</p> <p>10 194. Do you see that one?</p> <p>11 A Yeah.</p> <p>12 Q So we're going to scroll -- sorry, I'm</p> <p>13 giving you some definition so we can all know what</p> <p>14 we're talking about before we start looking at</p> <p>15 these defined terms.</p> <p>16 [So if we scroll down to Paragraph 2,</p> <p>17 Julie. On the Number 2. There we go.]</p> <p>18 It says, "After the acquisition TWE</p> <p>19 agrees to cause Osage to appoint EGPNA or its</p> <p>20 affiliate as designated by EGPNA as project</p> <p>21 representative with respect to finalizing the</p> <p>22 project design and engineering and negotiating an</p> <p>23 engineer procurement and construction contract."</p> <p>24 Do you know if that appointment was</p> <p>25 formalized in any document other than this letter</p>	<p>Page 64</p> <p>1 formalized in a document?</p> <p>2 A I don't.</p> <p>3 Q Okay. And then -- [Julie, if you can</p> <p>4 go to Paragraph 9.]</p> <p>5 Let's see. This one says -- let me</p> <p>6 find this for you.</p> <p>7 After -- in the first line starting at</p> <p>8 the end it says -- let's see. "Osage will make</p> <p>9 all final decisions on construction related</p> <p>10 matters, but shall do so in good faith with due</p> <p>11 regard to recommendations of EGPNA as the</p> <p>12 anticipated construction manager for the project."</p> <p>13 Do you know who at EGPNA was making</p> <p>14 recommendations regarding construction in</p> <p>15 April 2014?</p> <p>16 A I don't recall.</p> <p>17 Q And do you recall who at Osage Wind was</p> <p>18 in charge of making these final decisions?</p> <p>19 A I don't recall and I may never have</p> <p>20 known.</p> <p>21 Q Do you know who might have known that?</p> <p>22 A Enel.</p> <p>23 Q Enel would know?</p> <p>24 A I would think they might be able to</p> <p>25 find out who was in that role.</p>
<p>Page 63</p> <p>1 agreement?</p> <p>2 A I'm not aware.</p> <p>3 Q Okay. Let's see. Do you know what</p> <p>4 Enel entity was appointed as project</p> <p>5 representative?</p> <p>6 A I can't say. I don't recall.</p> <p>7 Q Okay. And then I think previously we</p> <p>8 had talked about finalizing design and engineering</p> <p>9 generally, but do you remember what that meant</p> <p>10 with respect to this project, Osage Wind, at this</p> <p>11 time?</p> <p>12 A Honestly, I can't recall the exact</p> <p>13 status of the project when we bought and when we</p> <p>14 sold it. I can tell you that Enel engineered</p> <p>15 their own projects and built their own projects.</p> <p>16 So they -- it's highly -- I'm assuming that they</p> <p>17 did appoint a representative and they did take</p> <p>18 over the contract negotiations. I don't recall</p> <p>19 being involved in those negotiations or that</p> <p>20 detailed engineering and construction process.</p> <p>21 Q Okay. Let's see. In Paragraph 3, it</p> <p>22 says, "After the acquisition, TWE agrees to cause</p> <p>23 Osage to appoint EGPNA, or its affiliate, as owner</p> <p>24 representative under certain other contracts."</p> <p>25 Do you know if those appointments were</p>	<p>Page 65</p> <p>1 Q Okay. Let's see. And then do you know</p> <p>2 what it means for Osage Wind to make their final</p> <p>3 decision with due regard to EGPNA's</p> <p>4 recommendation?</p> <p>5 A Sorry. Say that again.</p> <p>6 Q Yeah. Do you know what is meant here</p> <p>7 by "due regard to recommendations of EGPNA"?</p> <p>8 MR. BALL: Object to form.</p> <p>9 THE WITNESS: I can't -- I can't</p> <p>10 say.</p> <p>11 Q (By Ms. Blake) Let's see. Do you know</p> <p>12 if in April of 2014 EGPNA recommended that the use</p> <p>13 of dynamite or a rock crusher to construct the</p> <p>14 Osage wind farm project?</p> <p>15 A I do not.</p> <p>16 Q (By Ms. Blake) [Julie, if you could</p> <p>17 pull up Exhibit Number 199.]</p> <p>18 So this one doesn't -- it's not going</p> <p>19 to have this stamp on it yet because I don't think</p> <p>20 we've been given the officially stamped documents</p> <p>21 yet. But this was entered as Exhibit Number 199</p> <p>22 in a prior deposition. And it's Osage Wind</p> <p>23 040139. So it's the project's development</p> <p>24 agreement among Tradewind Energy, Enel Kansas and</p> <p>25 Osage Wind, and it's dated April 14th, 2014.</p>



<p>Page 68</p> <p>1 And then Tradewind on this page is</p> <p>2 listed as the development manager. Do you see</p> <p>3 that?</p> <p>4 A I do.</p> <p>5 Q Okay. And then, let's see, we'll</p> <p>6 scroll down to Page 40144. And in Section 2.2.</p> <p>7 Section 2.2 is called -- oh, you lost your video</p> <p>8 again.</p> <p>9 A Sorry, I was just checking my battery.</p> <p>10 Q Oh, that's fine. Is it okay?</p> <p>11 A Yeah.</p> <p>12 MR. MAY: We're going to try that</p> <p>13 again.</p> <p>14 THE WITNESS: I'm halfway --</p> <p>15 halfway charged so we're good.</p> <p>16 Q (By Ms. Blake) Oh, okay. All right.</p> <p>17 Okay. So the section we're looking at</p> <p>18 right now, Section 2.2, is development manager</p> <p>19 obligation. It says, "Tradewind agrees to perform</p> <p>20 all reasonable and necessary activities relating</p> <p>21 to the continued development of the project."</p> <p>22 Do you happen to recall in April 2014</p> <p>23 what those development activities were for this</p> <p>24 project?</p> <p>25 A I don't recall specifically. I recall</p>	<p>Page 68</p> <p>1 Schedule 2.2 hasn't been produced. But I'm</p> <p>2 guessing, do you recall -- do you happen to recall</p> <p>3 what was on that schedule?</p> <p>4 A No, I don't recall what was</p> <p>5 specifically on that schedule.</p> <p>6 Q Okay. That is totally fine.</p> <p>7 Let's see. [Julie, can you pull up</p> <p>8 Exhibit 52.] This one is Bates stamped Osage Wind</p> <p>9 035610. As you can see, it's the amended and</p> <p>10 restated balance of plant engineering procurement</p> <p>11 and construction contract by and between Osage</p> <p>12 Wind, LLC and IEA Renewable Energy formerly known</p> <p>13 as RMT, Inc. And this is dated April 11th, 2013.</p> <p>14 Have you seen this document before?</p> <p>15 A Not to my knowledge.</p> <p>16 Q Okay. Do you happen to know when</p> <p>17 the decision was made to enter this agreement</p> <p>18 with IEA?</p> <p>19 A I do not.</p> <p>20 Q Okay. Okay.</p> <p>21 Let's go to -- [Julie, if you could go</p> <p>22 to Page 11. It's Bates stamped 35620. Oh, wait,</p> <p>23 actually let's go to 356 -- sorry, Julie. Page</p> <p>24 63. Let's go there.]</p> <p>25 So in Section 6.2. This is owner's</p>
<p>Page 67</p> <p>1 the project getting a mature asset, so my</p> <p>2 recollection would be that it's just support work,</p> <p>3 if Enel needs anything from us, but I can't say</p> <p>4 specifically.</p> <p>5 Q And what kinds of things -- what kinds</p> <p>6 of things are encompassed by support work?</p> <p>7 A It could be making sure that we have a</p> <p>8 landowner relationship, that we could just help</p> <p>9 facilitate Enel getting to know a landowner or</p> <p>10 that kind of thing. Or providing any background.</p> <p>11 Understanding of a particular development issue</p> <p>12 that we were aware of. But oftentimes it was</p> <p>13 landowner-related because those were relationships</p> <p>14 that we often possess that Enel didn't when, at</p> <p>15 least initially. They developed those</p> <p>16 relationships over time.</p> <p>17 But this project, we didn't do the</p> <p>18 initial leasing, so those weren't -- those were</p> <p>19 more Wind Capital relationships. I'm sure we got</p> <p>20 to know those landowners while we owned it and</p> <p>21 then Enel would have developed those relationships</p> <p>22 after we sold it to them. That's an example.</p> <p>23 Q Perfect. So I'm going to -- let's see.</p> <p>24 So a little further on it says -- it includes</p> <p>25 items in Section 2.4 and Schedule 2.2. So</p>	<p>Page 69</p> <p>1 manager. And it says, "The owner shall appoint a</p> <p>2 representative to act as the manager and</p> <p>3 coordinator of this contract on owner's behalf.</p> <p>4 That's that first sentence there."</p> <p>5 Do you know who the owner's manager was</p> <p>6 in -- while Tradewind owned the project?</p> <p>7 A I do not.</p> <p>8 Q Okay. Let's see. [And then, Julie, if</p> <p>9 you can go to Page 90]. So right here it says</p> <p>10 that the contractor, which is IEA, acknowledges</p> <p>11 the owner, which is Osage Wind and it's affiliates</p> <p>12 "relied on the principles outlined in the Enel</p> <p>13 Code of Ethics and Enel zero tolerance of</p> <p>14 corruption in Enel 231 guidelines when conducting</p> <p>15 business and management relations."</p> <p>16 What is -- do you have an understanding</p> <p>17 for why Wind Capital Group and then Tradewind</p> <p>18 Energy would conduct business according to Enel's</p> <p>19 code of ethics?</p> <p>20 MR. BALL: Objection. Form.</p> <p>21 THE WITNESS: I'm not aware that</p> <p>22 we were. I assume this is boiler plate language</p> <p>23 that Enel requires in their construction contracts</p> <p>24 when someone is working on their behalf.</p> <p>25 Q (By Ms. Blake) Okay. So in April of</p>

<p>Page 70</p> <p>1 2013 did Enel have ownership in the Osage Wind</p> <p>2 farm project?</p> <p>3 A I don't recall the timeline of --</p> <p>4 honestly, when we bought it and we sold it to Enel</p> <p>5 when they started construction and signed this</p> <p>6 contract. I don't remember the specific sequences</p> <p>7 or dates.</p> <p>8 Q Okay. No worries.</p> <p>9 Let's see. [Then I think I'm done this</p> <p>10 with one, Julie. We can go to Exhibit 102. And</p> <p>11 that one is Bates stamped Osage Wind 003768.]</p> <p>12 And this is a scope of work document.</p> <p>13 And it's Exhibit B to that -- to the contract that</p> <p>14 we were just talking about.</p> <p>15 So based on an Enel technical report</p> <p>16 that I was produced at Osage Wind 018685, this</p> <p>17 appears to be a March 25th, 2013 version of the</p> <p>18 scope of work.</p> <p>19 [Julie, can you scroll down a little</p> <p>20 bit? And then let's go to -- we're going to go to</p> <p>21 Page 10 eventually.]</p> <p>22 But Mr, Gilhousen, do you recall seeing</p> <p>23 this document before?</p> <p>24 A Nope.</p> <p>25 Q Okay. So this will probably be quick</p>	<p>Page 72</p> <p>1 volumes periodically throughout the project."</p> <p>2 Do you see that sentence right there?</p> <p>3 A I do.</p> <p>4 Q Okay. Is this a typical requirement,</p> <p>5 do you know, for a wind farm project?</p> <p>6 A I can't say. I was not responsible for</p> <p>7 construction of -- final engineering or</p> <p>8 construction of wind projects. So I can't say.</p> <p>9 Q And then I'm just going to ask one more</p> <p>10 question, then, on this. [Julie, if you'll scroll</p> <p>11 down a little bit.] Right there in Paragraph G it</p> <p>12 says, "Rock blasting or removal has not been</p> <p>13 included." Do you see that in Paragraph G?</p> <p>14 A Yes.</p> <p>15 Q So to your knowledge is it correct that</p> <p>16 as of March 2013 Tradewind and Enel did not intend</p> <p>17 to use blasting in the construction of the Osage</p> <p>18 wind farm project?</p> <p>19 MR. BALL: Objection to form.</p> <p>20 THE WITNESS: Yeah, I can't say</p> <p>21 whether -- whether or not that's the case. I</p> <p>22 wasn't involved in those discussions.</p> <p>23 Q (By Ms. Blake) Okay. No worries.</p> <p>24 A This could mean a host of things. It</p> <p>25 could mean that they didn't think they would see</p>
<p>Page 71</p> <p>1 again, too. [Can we go to Page 10, Julie. So</p> <p>2 we're going to go to Paragraph E. Let's see. It</p> <p>3 might be page -- I think it's labeled Page 10 at</p> <p>4 the bottom. There we go.]</p> <p>5 So Paragraph E says, "Contractor will</p> <p>6 not be restricted regarding movement or transport</p> <p>7 of soil materials nor will contractor be</p> <p>8 responsible for fees or delays associated with</p> <p>9 mineral rights issues."</p> <p>10 Do you see where Paragraph E is?</p> <p>11 A Oh, yeah. Subsection E?</p> <p>12 Q Exactly. Yeah.</p> <p>13 So I know here, as opposed to the</p> <p>14 earlier -- or, the other things we were looking</p> <p>15 at, mineral rights is a defined term here. And it</p> <p>16 looks like one, but it's not defined in the</p> <p>17 contract we were looking at or in this exhibit.</p> <p>18 Do you know what is meant by "mineral</p> <p>19 rights issued" here?</p> <p>20 A I don't.</p> <p>21 Q Okay. Let's see. So Paragraph F says,</p> <p>22 the -- it has quantities of excavated materials.</p> <p>23 And then at the top, the paragraph at the top of</p> <p>24 Page -- what would be Page 11, it says that, "The</p> <p>25 contractor will be responsible to track excavation</p>	<p>Page 73</p> <p>1 rock or it could mean they weren't going to blast.</p> <p>2 I don't know what the intent is because I've not</p> <p>3 seen this document.</p> <p>4 Q Okay. No problem.</p> <p>5 Let's see. [Let's go ahead and do</p> <p>6 Exhibit Number 46, Julie. So this one is Bates</p> <p>7 stamped Osage Wind 000381.]</p> <p>8 And this is another scope of work. And</p> <p>9 so counsel for defendants has represented that</p> <p>10 this is an execution version of this scope of</p> <p>11 work. And like the last one, based on the Enel</p> <p>12 technical report that they produced, it appears to</p> <p>13 be from August 2014. So have you seen this --</p> <p>14 have you seen this document before?</p> <p>15 A Nope.</p> <p>16 Q Okay. Not surprising.</p> <p>17 [Julie, can you go to Page 11.] Let's</p> <p>18 see. Let's go -- let's look at paragraph --</p> <p>19 Section F there at the very bottom. And it says,</p> <p>20 "Rock blasting or removal has been included for 27</p> <p>21 turbines." Do you, by any chance, know why that</p> <p>22 change was made?</p> <p>23 A I do not know.</p> <p>24 Q Do you have -- do you know who would</p> <p>25 have made that change?</p>



<p>Page 74</p> <p>1 A I can't -- it wouldn't have been</p> <p>2 Tradewind. It must have been Enel or the</p> <p>3 contractor.</p> <p>4 <b>Q And is that the same for the -- so --</b></p> <p>5 <b>well, I guess first. So the requirement to track</b></p> <p>6 <b>excavation lines has been removed. Who would have</b></p> <p>7 <b>made that change?</b></p> <p>8 A The same answer. It would have been</p> <p>9 the parties to the contract.</p> <p>10 <b>Q Okay.</b></p> <p>11 <b>[Julie, that's enough for that exhibit.</b></p> <p>12 <b>Can we pull up Exhibit Number 91? This one is</b></p> <p>13 <b>Bates stamped Osage Wind Priv 000357.]</b></p> <p>14 <b>This is an email exchange as you can</b></p> <p>15 <b>see with the subject Attorney/Client Privileged.</b></p> <p>16 <b>[And then Julie, can you scroll all the way down</b></p> <p>17 <b>to the beginning of the thread.]</b></p> <p>18 <b>So here at the beginning of the thread</b></p> <p>19 <b>on February 17th, 2014, Justin Larson of -- it</b></p> <p>20 <b>looks like Tradewind based off of his email</b></p> <p>21 <b>address, asked John Blickensderfer at engineering</b></p> <p>22 <b>services if he has experience with an Osage mining</b></p> <p>23 <b>permit. Do you see that email from Justin, or</b></p> <p>24 <b>from Mr. Larson?</b></p> <p>25 A Yes, I see the email address and see</p>	<p>Page 75</p> <p>1 lead developer for the project, but I don't know</p> <p>2 why he would have sent it exactly.</p> <p>3 <b>Q No problem.</b></p> <p>4 <b>So we're going to look at a couple of</b></p> <p>5 <b>other exhibits really quick.</b></p> <p>6 <b>[So, Julie, if you can pull up Exhibit</b></p> <p>7 <b>Number 92.]</b></p> <p>8 <b>So this one is Bates stamped Osage Wind</b></p> <p>9 <b>Priv 000359. And so based off of its placement in</b></p> <p>10 <b>defendants's production, it looks like one of the</b></p> <p>11 <b>attachments to that email exchange we just looked</b></p> <p>12 <b>at with Mr. Blickensderfer. Have you seen this</b></p> <p>13 <b>document before?</b></p> <p>14 A I don't recall seeing it, no.</p> <p>15 <b>Q Okay.</b></p> <p>16 <b>MS. BLAKE: So I'll just note for</b></p> <p>17 <b>everyone else that another copy of this document</b></p> <p>18 <b>has been entered Exhibit Number 72 as well.</b></p> <p>19 <b>Q (By Ms. Blake) So this document is</b></p> <p>20 <b>titled Oklahoma Department of Transportation</b></p> <p>21 <b>Special Provision for Osage Nation Mineral</b></p> <p>22 <b>Reservations-Sandy Soil Mining Permit. So, do you</b></p> <p>23 <b>agree that this document appears to be the</b></p> <p>24 <b>Oklahoma Department of Transportation</b></p> <p>25 <b>implementation of Osage specific mining</b></p>
<p>Page 75</p> <p>1 the email.</p> <p>2 <b>Q Okay, awesome. Do you know who</b></p> <p>3 <b>Justin Larson is?</b></p> <p>4 A Yes, Justin reported to me. He was</p> <p>5 responsible for design -- design and engineering</p> <p>6 for Tradewind.</p> <p>7 <b>Q Okay. Let's see. Do you know why</b></p> <p>8 <b>Mr. Larson would ask Mr. Blickensderfer about an</b></p> <p>9 <b>Osage mining permit in February of 2014?</b></p> <p>10 A I can't say exactly what would have</p> <p>11 triggered that task.</p> <p>12 <b>Q So if we look at -- [Julie, can you</b></p> <p>13 <b>scroll up a little bit] -- look at</b></p> <p>14 <b>Mr. Blickensderfer's reply. So he replies on</b></p> <p>15 <b>February 28th. And he says, "This is the special</b></p> <p>16 <b>provision as associated with all projects in</b></p> <p>17 <b>Osage County."</b></p> <p>18 <b>Do you see where he says that? It's</b></p> <p>19 <b>the first sentence of the email.</b></p> <p>20 A Right.</p> <p>21 <b>Q Okay. And then just above that on</b></p> <p>22 <b>April 25th Mr. Larson forwards this email to Aaron</b></p> <p>23 <b>Weigel. Do you know why Mr. Larson forwarded the</b></p> <p>24 <b>email to Mr. Weigel on April 25th?</b></p> <p>25 A I can't say exactly. Aaron was the</p>	<p>Page 77</p> <p>1 <b>regulations?</b></p> <p>2 <b>MR. BALL: Objection to form.</b></p> <p>3 <b>Calls for speculation.</b></p> <p>4 <b>THE WITNESS: I can't say what</b></p> <p>5 <b>this is exactly. If you're telling me that's what</b></p> <p>6 <b>it is, I guess I would have to assume it is what</b></p> <p>7 <b>you say it is.</b></p> <p>8 <b>Q (By Ms. Blake) Yep, no problem.</b></p> <p>9 <b>[Julie, if you could pull up Exhibit</b></p> <p>10 <b>Number 93. This one is Bates stamped Osage Wind</b></p> <p>11 <b>Priv 000361.] And it also appears to be -- it</b></p> <p>12 <b>appears to be the other attachment to</b></p> <p>13 <b>Mr. Blickensderfer's email just based off the</b></p> <p>14 <b>placement in the production. Have you seen this</b></p> <p>15 <b>one before?</b></p> <p>16 A Not to my knowledge.</p> <p>17 <b>Q So this one is titled Procedures for</b></p> <p>18 <b>Obtaining Sandy Soil and Rock Mining Permits-Osage</b></p> <p>19 <b>County, Oklahoma. Do you see that?</b></p> <p>20 A Yes.</p> <p>21 <b>Q And then just below that it says,</b></p> <p>22 <b>"Permits are processed through the branch of</b></p> <p>23 <b>minerals at the Osage Indian agency." That's the</b></p> <p>24 <b>very first sentence. Do you see that one?</b></p> <p>25 A Yep.</p>

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1 Q And then the second sentence says,  
2 "Lessee will be subject to the code of federal  
3 regulations under 25 CFR Part 214." Do you see  
4 that sentence, too?  
5 A Yes.  
6 Q And then the very last one I wanted to  
7 draw your attention to is -- so the last sentence  
8 of that first paragraph says, "The following steps  
9 are described below." And the first step says,  
10 "Letter to the superintendent, Osage Indian  
11 agency." Do you see that?  
12 A Sorry, where is that?  
13 Q Sorry. The last sentence of that very  
14 first paragraph and then it gives the first step  
15 as letter to the superintendent. Do you see  
16 those?  
17 A I see type of permit, legal  
18 description, the mine site.  
19 Q Yeah. You are more than welcome to go  
20 ahead and read all of the --  
21 A Sorry. Apologies. I'm not seeing  
22 exactly what you're pointing at.  
23 Q Oh, yeah. So -- sorry.  
24 So the first step of looking at a  
25 permit is just letter to the superintendent and it

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1 includes all of the things that you just --  
2 A Okay. Gotcha.  
3 Q Okay. Yeah.  
4 Did anyone follow up with -- to your  
5 knowledge, did anyone follow up with  
6 Mr. Blickensderfer for clarification about his  
7 statement that the special provision was  
8 associated with all projects in Osage County?  
9 A I'm not aware. What was the timing of  
10 that email relative to --  
11 Q Oh, yeah. No problem --  
12 A -- the construction of the project and  
13 this lawsuit?  
14 Q Yeah. So, let's see.  
15 [So, Julie, if you could pull up his  
16 email again. That's Exhibit Number 91. And then  
17 scroll down. So -- another scroll. Yeah, there  
18 we go.]  
19 So Mr. Blickensderfer's email was sent  
20 on February 28th. So, then, I believe the -- in  
21 the second MIPA, so when Tradewind sold the  
22 project to Enel, That was in September of 2014.  
23 Does that help?  
24 A So this was after the acquisition prior  
25 to the sale?

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1 Q Exactly. Yeah. Right in the middle  
2 there.  
3 A Okay, thank you.  
4 Q Yeah, no problem.  
5 Let's see. So do you know if anyone  
6 followed up with Mr. Blickensderfer for  
7 clarification?  
8 A Who was he again?  
9 Q He is -- well, just based off his  
10 signature block he's the vice-president of  
11 engineering at -- let's see. Where is the title  
12 of his -- of his company?  
13 [Julie, if you can scroll up just a  
14 little bit. Sorry. Scroll down.]  
15 So he's the vice-president of  
16 engineering at GUY Engineering Services, Inc. And  
17 this is the man that Justin Larson emailed for --  
18 about experience with the Osage mining permit.  
19 [Julie, can you scroll back up a just a  
20 little bit. Thank you. Just right there.]  
21 Do you know if anyone followed up on  
22 his statement that this special provision was  
23 associated with all projects in Osage County?  
24 A Yeah. I don't know. And I don't know  
25 what he means by "all projects" either.

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1 Q Yeah, I was not going to ask you.  
2 Let's see. Where -- let me see the  
3 next one. Do you know if anyone followed up with  
4 him from (audio distortion) about anything else  
5 related to this permit?  
6 A I'm not aware and I am not aware of who  
7 he is or his involvement in the project.  
8 Q Yeah, no problem.  
9 Let's see. Do you know if anyone  
10 followed up with the Osage Indian agency for more  
11 information?  
12 MR. BALL: Objection to form.  
13 THE WITNESS: I'm not aware of --  
14 in specific to this email string, no, not aware.  
15 Q (By Ms. Blake) Oh. So -- sorry. I  
16 was talking more about the attachments. Do you  
17 know if anyone followed up with the Osage Indian  
18 agency regarding the attachments that we just  
19 looked at, 92 and 93?  
20 MR. BALL: Objection to form.  
21 THE WITNESS: Yeah. I don't know.  
22 Q (By Ms. Blake) That's fine. "I don't  
23 know" is fine.  
24 Do you know if anyone followed up with  
25 the OMC or Osage Nation regarding those documents?

<p>Page 82</p> <p>1 MR. BALL: Objection to form.  2 THE WITNESS: I can't say with  3 respect to those attachments. I've never -- to my  4 knowledge I've not seen them. I know there were  5 numerous conversations from the project to the  6 Osage Nation throughout the life of the project.  7 But I can't say specific to this -- those  8 attachments or the email string.  9 <b>Q (By Ms. Blake) Yeah, that's fine.</b>  10 <b>Okay, let me see --</b>  11 MS. BLAKE: Oh, sorry. Do you see  12 something I'm missing?  13 MR. BALL: I was just going to  14 say, it looks like the reporter may need a break.  15 Maybe we could take a break just because I see  16 her --  17 MS. BLAKE: I'm sorry, Marcy. I  18 had gallery first and then speaker view so I  19 didn't see your signals. Sorry about that.  20 MR. BALL: She wasn't signaling  21 that you could see but she was feeling the  22 effects.  23 THE VIDEOGRAPHER: Off the record  24 at 11:28 a.m.  25 (A break was taken from 11:28 to 11:41</p>	<p>Page 84</p> <p>1 <b>October the 11th, 2014. And then scroll up a</b>  2 <b>little more, Julie, to Mr. Gilhousen's response.]</b>  3 <b>And so there's -- you respond to</b>  4 <b>Mr. Willman -- or you forward it on to people</b>  5 <b>here. [And then, Julie, if you could scroll up a</b>  6 <b>little bit more. And a little bit more. We're</b>  7 <b>going to go all the way past this.]</b>  8 <b>So this is -- Steve Willman has</b>  9 <b>forwarded this email on to Bill Scott. [And then,</b>  10 <b>Julie, if you could go up just a little bit more.]</b>  11 <b>And then right here there's a reply</b>  12 <b>from you from October 11th. And can you see where</b>  13 <b>that is? It's kind of -- it's really bunched up</b>  14 <b>in there.</b>  15 A Yeah. I'm sorry, what are we looking  16 at? Where are we?  17 <b>Q Yeah, exactly.</b>  18 <b>Mr. Gilhousen, do you see your reply</b>  19 <b>on October 11th, 2014 at 2:01 p.m.?</b>  20 A So this is October 11th, 2014? Yes.  21 My bearings as to where -- the context here and  22 where we're at in the process of the project are  23 unclear to me.  24 <b>Q Would it be helpful to read parts of</b>  25 <b>this email so you can get oriented?</b></p>
<p>Page 83</p> <p>1 a.m.)  2 THE VIDEOGRAPHER: We're back on  3 the record at 11:41 a.m.  4 <b>Q (By Ms. Blake) Mr. Gilhousen, I'm</b>  5 <b>going to start with another email exchange.</b>  6 <b>[Julie, if you could pull up Exhibit</b>  7 <b>Number 89. Okay, great. And this is Bates</b>  8 <b>stamped Osage Wind Priv 000299.]</b>  9 <b>And as you can see, it's got -- it an</b>  10 <b>email exchange with the subject EIA on there.</b>  11 <b>[Julie, could you scroll down to the</b>  12 <b>very bottom.]</b>  13 <b>Okay. So it starts right here where</b>  14 <b>Ryan Ray forwards -- let's see. [Let's scroll up</b>  15 <b>a little bit actually.] So you see Ryan --</b>  16 <b>[Scroll down here. Here we go.] So, Steve</b>  17 <b>Willman says -- [Go up just a little bit. Sorry,</b>  18 <b>Julie.]</b>  19 <b>So Steve Willman says -- he forwards to</b>  20 <b>you, Rob and -- Rob Freeman and Geoff Coventry a</b>  21 <b>letter that he says Ryan Ray provided from the</b>  22 <b>tribe website. "Someone should probably pass this</b>  23 <b>along to EGP." And this is on --</b>  24 <b>[Julie, if you'll scroll up a little</b>  25 <b>bit so we can try to catch the date. This is</b></p>	<p>Page 85</p> <p>1 A I'm not sure if it would or wouldn't  2 be. What's the question?  3 <b>Q Well, so I was going to ask you some</b>  4 <b>questions about this -- about your response on</b>  5 <b>October 11th. And I just want to make sure that</b>  6 <b>you can tell where that is because the way this is</b>  7 <b>produced, it's a little difficult to read.</b>  8 A Yeah. I can see the email.  9 <b>Q Okay. So in this reply right here, you</b>  10 <b>write that -- let's see, in the second sentence</b>  11 <b>you see, "I believe this was looked at some time</b>  12 <b>ago along with the overall mineral permit issue."</b>  13 <b>What did you mean here by "overall</b>  14 <b>mineral permit issue"?</b>  15 A I can't speculate exactly what I meant  16 about mineral permit issue, but I suspect we were  17 talking about whether we were mining or not.  18 Whether -- yeah, just the general topic. But,  19 again, I can't recall exactly what I was talking  20 about here.  21 <b>Q Okay. Do you -- do you remember what</b>  22 <b>-- when the research that you're referring to in</b>  23 <b>this paragraph was conducted?</b>  24 A Not specifically. I believe we -- Wind  25 Capital Group and Tradewind and Enel engaged the</p>

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1 county and the tribe numerous times throughout the  
2 history of the project. So, yeah.  
3 **Q Okay. And then do you at all remember**  
4 **exactly what the question that they researched**  
5 **was?**  
6 A No, I don't remember exactly what that  
7 question was.  
8 **Q Do you remember who asked them to do**  
9 **the research?**  
10 A I do not.  
11 MR. BALL: Objection to form.  
12 **Q (By Ms. Blake) Do you know who would?**  
13 A No. I mean, you would have to study  
14 the email strings to figure out who requested the  
15 question being asked. Yeah, what the context was.  
16 **Q Okay. Do you -- [Julie, if you can**  
17 **scroll down to -- well, let's see. Actually,**  
18 **let's do -- sorry, just looking through my**  
19 **outline. Okay. Julie, actually, let's go to**  
20 **Exhibit Number 94.] And this is Osage Wind Priv**  
21 **000619. And as you can see, it's titled Minerals**  
22 **Statutes.**  
23 [So, Julie, if you can scroll to the  
24 very bottom of the email chain right there.]  
25 This is an email from you to Lynn

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1 **Slade, Bill Scott, Steve Willman, Rob Freeman and**  
2 **Aaron Weigel. And you ask, "Can one of you send**  
3 **out the specific language from the statutes that**  
4 **describes what mineral-related activity does**  
5 **require a permit from the BIA." Do you see that?**  
6 A Yeah.  
7 **Q And this says -- just so we can orient**  
8 **ourselves, this is October 25th, 2013. Do you see**  
9 **that up there at the top?**  
10 A Yes. So this was after the start of  
11 construction? After the sale?  
12 **Q I believe --**  
13 A Or this was before?  
14 **Q This is before Tradewind's sale to Enel**  
15 **but after Tradewind purchased from Wind Capital**  
16 **Group.**  
17 A Gotcha.  
18 **Q [Let's scroll up a little bit, Julie,**  
19 **to Mr. Slade's email.]**  
20 A Do we know that this is actually with  
21 respect to an Osage project versus Mustang Run?  
22 **Q I would be interested -- what is your**  
23 **recollection?**  
24 A I don't have a recollection other than  
25 there were two projects in Osage County that we

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1 were involved in. I don't know which one I'm  
2 speaking about here.  
3 **Q Was there -- were there any issues, do**  
4 **you recall, going on with Mustang Run at this**  
5 **time?**  
6 A It was a later -- it was an earlier  
7 stage project, so it was going through -- we  
8 didn't originate the Osage project. We bought it  
9 pretty much completed from a developer perspective  
10 is my recollection. Mustang Run was an expansion  
11 project that was early-staged, so we would have  
12 been going through the question and answer and  
13 diligence process on Mustang Run potentially at  
14 overlapping times with the Osage project.  
15 **Q Do you -- do you have any reason to**  
16 **believe that the mining issues with respect to**  
17 **Osage (sic) Run and Osage Wind would be different?**  
18 A I'm sorry. Did you say Osage Run?  
19 **Q Mustang Run and Osage Wind. Sorry, I**  
20 **might have said that wrong.**  
21 A In different points in time, different  
22 projects. But, yeah, they could potentially be  
23 different.  
24 **Q Do you think -- sorry. So do you think**  
25 **that there would be a difference in whether one**

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1 **was required to get a mining permit than the other**  
2 **one?**  
3 MR. BALL: Objection. Form.  
4 THE WITNESS: It's plausible.  
5 Yeah. Again, there were different projects in the  
6 same county next to each other. Different stages  
7 of development so there could be different -- a  
8 whole host of differences between the projects.  
9 I'm not saying there are; I'm just saying that  
10 it's plausible. I don't -- honestly, I don't  
11 recall which project I was talking about at any  
12 specific time unless I'm specifically saying this  
13 is with respect to the Osage Wind project or this  
14 is with respect to the Mustang Run project. I'm  
15 not trying to be combative here. I don't know.  
16 **Q (By Ms. Blake) Oh, yeah, no worries.**  
17 **If you had an inkling that it might be one or the**  
18 **other, I wanted to understand that better.**  
19 **I think regardless -- I think it's**  
20 **still -- I think it's helpful to go through this a**  
21 **little bit still.**  
22 **So, let's see. So, as I said before,**  
23 **if we look in Mr. Slade's email, he says that**  
24 **there are specific regulations -- in that very**  
25 **first sentence. Sorry. "There are specific**



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1 regulations governing leasing of minerals other  
2 than oil and gas on Osage lands." And cites 25  
3 CFR Part 214.  
4 And then -- sorry. Do you see that  
5 right there in that first sentence?  
6 A Yes.  
7 Q Okay. And then -- [Julie, if you could  
8 scroll down actually to the bottom.]  
9 So there's a lot of discussion here  
10 about the particulars of 25 CFR Part 211 which is  
11 general (inaudible) subject to the regulations  
12 under the Indian Mining Act.  
13 And then at the very last -- the last  
14 sentence of this he says that, "The Osage specific  
15 regulations do not define mining or provide other  
16 guidance as to what triggers the requirement of a  
17 lease and they do not authorize a permit." Do you  
18 see that?  
19 A I'm sorry, where specifically is that?  
20 Q Yeah, it's the second to the last  
21 sentence in this email.  
22 A Okay. I see it.  
23 Q Awesome.  
24 Do you remember what your understanding  
25 of the requirements regarding obtaining a mining

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1 lease from the Osage -- for the Osage minerals in  
2 the state was at this time?  
3 MR. BALL: Objection. Form.  
4 THE WITNESS: My recollection is  
5 that -- and I can't say if this was with respect  
6 to Osage or Mustang or both, but we spent a lot of  
7 time talking with counsel, or times talking with  
8 counsel, the various stakeholders, and didn't  
9 believe that the wind project was mining.  
10 We had legal counsel indicating --  
11 telling us we didn't need a permit. And we had  
12 never been told from the Mineral Council or the  
13 tribe that we needed a permit prior to  
14 commencement of the construction, to my knowledge.  
15 So that's my recollection of the matter.  
16 Q (By Ms. Blake) Was there -- was there  
17 any time that you thought you might need a permit?  
18 MR. BALL: Objection to the form.  
19 THE WITNESS: No.  
20 Q (By Ms. Blake) Let's see. So at the  
21 time that Mr. Slade was giving you this  
22 information about the regulations -- [Julie, if  
23 you could scroll up.] This was October 25th,  
24 2013. Do you know if the facts regarding the  
25 project construction and excavation plans had been

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1 provided to Modrall?  
2 A I can't say whether they had or hadn't  
3 been.  
4 Q Do you know who might know?  
5 A I can't say. I don't know.  
6 Q Let's see. [Julie, can you pull up  
7 Osage Wind Priv 000672.]  
8 MS. COMBS: Just to clarify. You  
9 want to pull that by Bates stamp?  
10 MS. BLAKE: If we have the stamped  
11 exhibit, that would be great but I don't think we  
12 have it yet. It's been previously entered as  
13 Exhibit Number 200.  
14 Q (By Ms. Blake) Okay. Mr. Gilhousen,  
15 this is another email exchange with Mr. Slade and  
16 this one was started by Mr. Freeman, but you are  
17 copied here on this email.  
18 [Julie, if you could scroll down just  
19 so we can kind of get oriented here.]  
20 On October 25th, 2013, Mr. Freeman here  
21 says that -- so, down here at this part of this  
22 email exchange the subject is GMK revisions to  
23 draft letter. I assume that LTR is letter. WCG  
24 to OMC. And you're also copied on that part of  
25 the email.

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1 Do you -- do you know, does WCG mean  
2 Wind Capital Group?  
3 A I don't know. I would assume so, but I  
4 don't know.  
5 Q And, then, so Mr. Freeman here says  
6 "I'm afraid to ask given the long call yesterday  
7 but I have been quietly wondering if there is some  
8 specific activity affecting minerals that, by  
9 definition, triggers involvement of the BIA."  
10 [And then if we scroll up a little bit,  
11 Julie, to Mr. Slade's reply.] You can see he  
12 replies that same day.  
13 And then in the last -- the second to  
14 last sentence of that email he says, "We will  
15 contend that simply moving dirt does not require a  
16 mineral lease or permit."  
17 What was your understanding of what  
18 Mr. Slade meant by "simply moving dirt"?  
19 A I can't -- I can't speculate on that.  
20 Q Do you have your own understanding?  
21 A Like I said, I don't believe that there  
22 was any point in time where we felt that building  
23 the wind project constituted mining.  
24 Q Yeah, I understand that. But did you  
25 have any kind of idea what it would mean to just

<p>Page 94</p> <p>1 simply move dirt?</p> <p>2 A Common vernacular would be you're</p> <p>3 pushing dirt around, digging holes, building</p> <p>4 roads, that kind of thing.</p> <p>5 Q Okay. Then Mr. Freeman mentions -- had</p> <p>6 mentioned in his email a long call. Was that --</p> <p>7 let's see. Hold on. Would information regarding</p> <p>8 construction have been provided during that call?</p> <p>9 MR. BALL: Objection. Form.</p> <p>10 THE WITNESS: I don't know.</p> <p>11 Q (By Ms. Blake) Let's see. Do you know</p> <p>12 if Mr. Slade based his characterization on simply</p> <p>13 moving dirt off of information that Tradewind had</p> <p>14 provided to him?</p> <p>15 MR. BALL: Objection to form.</p> <p>16 THE WITNESS: I don't know the</p> <p>17 answer to that question.</p> <p>18 Q (By Ms. Blake) Do you know who might</p> <p>19 know the answer to that question?</p> <p>20 A No.</p> <p>21 Q Okay. Let's see. Okay. Let's go to</p> <p>22 -- oh, I guess one more question would be. Was</p> <p>23 Wind Capital Group at all involved with Mustang</p> <p>24 Run?</p> <p>25 A Sorry. Say that again, please.</p>	<p>Page 95</p> <p>1 Number 36.]</p> <p>2 So this is Bates stamped Osage Wind</p> <p>3 Priv 000414. Once we get it up. And this is a</p> <p>4 memorandum from Sarah Stevenson to Bill Scott and</p> <p>5 it's dated October 31st, 2013. So this is just a</p> <p>6 week or two after the email exchange we just</p> <p>7 looked at.</p> <p>8 Have you seen this memorandum before?</p> <p>9 A I don't recall seeing it, but it's</p> <p>10 possible.</p> <p>11 Q Okay. Do you know who asked Modrall to</p> <p>12 write this email?</p> <p>13 A I don't recall.</p> <p>14 Q Okay. Do you know who might recall?</p> <p>15 A Nope.</p> <p>16 Q Do you know where Modrall might have</p> <p>17 gotten the information -- or, sorry, gotten the</p> <p>18 facts on which to base this memorandum?</p> <p>19 A I do not.</p> <p>20 Q I'm just checking my outline.</p> <p>21 Do you know if Tradewind asked Modrall</p> <p>22 to do this research?</p> <p>23 A I don't recall.</p> <p>24 Q Is there anybody at Tradewind that</p> <p>25 would recall?</p>
<p>Page 95</p> <p>1 Q Was Wind Capital Group involved with</p> <p>2 Mustang Run?</p> <p>3 A Not to my recollection, no.</p> <p>4 Q [And then, Julie, if you can scroll up</p> <p>5 just a little bit.]</p> <p>6 So in this last email to Mr. Freeman</p> <p>7 you're copied up there as well. Mr. Slade says</p> <p>8 down here in his very last sentence that he's</p> <p>9 interested in Connie's perspective on these</p> <p>10 issues. Do you know who Connie is?</p> <p>11 A I do not.</p> <p>12 Q Do you have any understanding why</p> <p>13 Mr. Slade would be interested in her perspective?</p> <p>14 A I do not.</p> <p>15 Q Okay.</p> <p>16 [Julie, can you scroll up just a little</p> <p>17 bit.] Is it possible that Connie is -- as you see</p> <p>18 here in the 2 line there's Constance L. Rogers.</p> <p>19 Is it possible that Connie is Constance L. Rogers?</p> <p>20 MR. BALL: Objection to form.</p> <p>21 THE WITNESS: I can't speculate on</p> <p>22 that. Sorry.</p> <p>23 Q (By Ms. Blake) No, that's totally</p> <p>24 fine. Okay. All right.</p> <p>25 [Julie, if you could pull up Exhibit</p>	<p>Page 97</p> <p>1 MR. BALL: Objection to form.</p> <p>2 THE WITNESS: I can't say if they</p> <p>3 would or wouldn't.</p> <p>4 Q (By Ms. Blake) Sorry, I'm just looking</p> <p>5 through my outline.</p> <p>6 Do you know if this analysis affected</p> <p>7 the construction plans in October of 2013?</p> <p>8 A I do not.</p> <p>9 Q Do you know if the analysis in this</p> <p>10 memorandum was acted upon for purposes of the</p> <p>11 construction plan?</p> <p>12 A I can't say. I don't know.</p> <p>13 Q [Julie, can you take that one down for</p> <p>14 me.] Let's see. Who would know if the analysis</p> <p>15 and the memorandum was implemented?</p> <p>16 MR. BALL: Object to the form.</p> <p>17 THE WITNESS: I don't know what</p> <p>18 the emphasis of that memorandum is, so I can't</p> <p>19 opine on those questions.</p> <p>20 Q (By Ms. Blake) Do you know who would</p> <p>21 have made a decision whether to follow advice of</p> <p>22 counsel or not?</p> <p>23 A That was standard operating procedure,</p> <p>24 was to act on advice of counsel.</p> <p>25 Q And how -- okay. Let's see. And who</p>



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1 usually was involved in receiving the advice about

2 -- or who communicated with outside counsel

3 regarding advice typically?

4 MR. BALL: Objection. Form.

5 THE WITNESS: The same individuals

6 as I mentioned previously. My staff and my

7 colleagues, Rob and Geoff.

8 Q (By Ms. Blake) So everyone -- was

9 everyone on the Tradewind/Osage team have been

10 involved with discussions with outside counsel?

11 MR. BALL: Objection to form.

12 THE WITNESS: I'm not saying that

13 everyone was. I'm saying that it's possible. It

14 wouldn't have been out of the ordinary course of

15 business for various department leads and project

16 managers as well as management of the company to

17 be engaged with outside counsel on various

18 matters.

19 Q (By Ms. Blake) Okay. [Julie, can you

20 pull up Exhibit Number 107. This is stamped Osage

21 Wind Priv 000577.]

22 And this is another version of the memo

23 that's dated May 19th, 2014. And this is before

24 the September 2014 sale of the project to Enel.

25 So this is to Steve Willman, Tradewind Energy. Do

Page 99

1 you recall ever seeing this version of the memo?

2 A I do not.

3 Q Okay. And do you know why Steve

4 Willman would have needed an updated version of

5 the memo on May 19, 2014?

6 A I do not.

7 Q Do you know who might know?

8 A I do not.

9 Q Okay. Do you know if any of the

10 analysis here affected the construction plans at

11 all?

12 MR. BALL: Objection to form.

13 THE WITNESS: Again, I don't know

14 what the findings of the memo are, so I can't say.

15 Q (By Ms. Blake) Okay. I'm just looking

16 at my outline to see. Let's see what's left.

17 [Julie, if we could go back to -- if we

18 could go back to Exhibit Number 89. Okay. So

19 let's go to -- back down to Mr. Gilhousen's reply

20 of October 11th. There we go. Right there.

21 That's perfect.]

22 Let's see. So do you know -- do you

23 recall how the research that you referred to in

24 here was implemented in either your development

25 plan or your construction plan?

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1 MR. BALL: Objection. Form.

2 THE WITNESS: I do not.

3 Q (By Ms. Blake) And, sorry, I'm going

4 to ask again. Do you know who would know the

5 answer to that?

6 A I don't.

7 Q Let's see. So the last sentence -- or,

8 let's see, no, sorry, that's the third to the last

9 sentence. You say, "I wouldn't stop anything

10 until someone shows up with a TRO as we have done

11 nothing wrong."

12 Now that the Tenth Circuit has issued a

13 decision concluding that Enel and Tradewind were

14 required under law to obtain a permit from the

15 Osage Nation prior to mining the Osage Minerals

16 estate, is it still your opinion that you would

17 not have to obtain a permit unless there's a TRO?

18 MR. BALL: Objection to form.

19 THE WITNESS: I'm not aware of the

20 details of what has or hasn't been decided by the

21 court. If I was developing a project now, I would

22 definitely have to reeducate myself on what's

23 required.

24 Q (By Ms. Blake) Okay. Let's see.

25 [Julie, can you pull up Exhibit Number

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1 38, please.]

2 This is the letter that was being

3 discussed in that email chain that we just went

4 back to. And it's Bates stamped Osage Wind Priv

5 000243.

6 Let's see. In the last paragraph,

7 [Julie if you could scroll up] you can see the

8 date on this is October 9th, 2014. And it's to

9 Mr. Francesco Venturini. [And If you could scroll

10 up a little bit, please, Julie. Yeah, just scroll

11 all the way up. We're going to go to the last

12 paragraph. There we go. Just so we can see the

13 whole body of the letter. Thank you.]

14 So the last paragraph says, "You are to

15 refrain from any further excavation of minerals

16 until such time that you have obtained a sandy

17 soil permit through the Osage agency. Do you see

18 that sentence?

19 A I do.

20 Q Do you know if excavation of the

21 project has ever halted like Superintendent

22 Phillips directed in her letter?

23 MR. BALL: Objection to form.

24 THE WITNESS: I'm not aware of

25 that.

<p>Page 102</p> <p>1 Q (By Ms. Blake) Okay. Let's see. Do              2 you know who might be?              3 A Whoever was responsible for              4 constructing the project.              5 Q Okay. Would that be someone at Enel or              6 at Tradewind?              7 MR. BALL: Objection to form.              8 THE WITNESS: Someone at Enel.              9 Q (By Ms. Blake) Okay. Let's see. Do              10 you know if the memorandum that I shared with you              11 in Exhibit 36 would have played any role to              12 continue in the decision to continue construction?              13 MR. BALL: Objection. Form.              14 THE WITNESS: I can't speculate on              15 that.              16 Q (By Ms. Blake) Let's see. Do you know              17 if Enel or Tradewind ever attempted to get a sandy              18 soil permit that Superintendent Phillips refers to              19 here?              20 A Not to my knowledge.              21 Q And do you know why that is?              22 A My recollection was that we didn't              23 believe the project needed a sandy soils permit.              24 And that's, again, based on not receiving the              25 indication that that was required by the tribe or</p>	<p>Page 104</p> <p>1 -- no. Let's see.              2 Do you know if the decision not to halt              3 construction in response to Superintendent              4 Phillips' letter was made based off of advice from              5 legal counsel?              6 MR. BALL: Objection. Form.              7 THE WITNESS: I don't know the              8 answer to that.              9 Q (By Ms. Blake) Sorry? You don't              10 remember or you don't know?              11 A I don't know. Yeah, I don't know. We              12 weren't building a project.              13 Q Okay. So do you know how that decision              14 was made?              15 A I do not.              16 Q Okay. I think -- let me -- let me              17 check my notes here. I think that might be -- oh,              18 I guess the last question I do have is who at              19 Tradewind would have asked Modrall to do the legal              20 research regarding the permitting?              21 MR. BALL: Form.              22 THE WITNESS: It could have been              23 my direct reports or myself or Rob or Geoff, or              24 counsel.              25 Q (By Ms. Blake) Okay. You just don't</p>
<p>Page 103</p> <p>1 by counsel. It was our general belief that we              2 weren't mining; we were building a wind project.              3 Q And just to be clear, so do you -- and              4 you don't have -- you said it was based on the              5 advice of counsel, but do you recollect who asked              6 counsel?              7 A Who asked counsel?              8 Q Uh-huh.              9 A Tradewind would have -- would have              10 asked counsel.              11 Q Okay.              12 A I assume Enel would have as well as              13 Wind Capital, but I can't say for sure.              14 Q And were you part of any of the              15 conversations with counsel?              16 MR. BALL: Objection to form.              17 THE WITNESS: I suspect I was. I              18 can't recall any specific conversations.              19 Q (By Ms. Blake) So do you have any              20 recollection for how much time you might have              21 spent discussing permitting issues regarding the              22 Osage minerals --              23 A I can't -- I can't recall specifically              24 how much time was spent on that, no.              25 Q Okay. Okay. Let's see. Do you know</p>	<p>Page 105</p> <p>1 remember who exactly?              2 A Yeah, I don't remember who exactly had              3 asked.              4 MS. BLAKE: That is, I believe,              5 all. I'm sorry. I'm checking my notes again.              6 Okay. That is all I have.              7 I can pass the witness on to the United              8 States. We can take a lunch break. What do you              9 want to do, Nolan?              10 MR. FIELDS: I definitely want to              11 take a 30-minute lunch break at minimum. I don't              12 know about you, Mr. Gilhousen. Is that something              13 that you can work with?              14 THE WITNESS: Are you saying you              15 do or you don't? I'm sorry.              16 MR. FIELDS: I'm going to, yes.              17 I'm going to take a 30-minute lunch break. So I              18 hope that that works for the rest of you all.              19 Does that time sound decent so we can get started              20 back at, I don't know, like 1:00 Central time?              21 MR. BALL: Sure. Fine with me.              22 THE VIDEOGRAPHER: Off the record              23 at 12:21 p.m.              24 (A lunch break was had from 12:21 to              25 1:01 p.m.)</p>

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1 THE VIDEOGRAPHER: We're back  
2 record at 1:01 p.m.  
3 CROSS EXAMINATION  
4 BY MR. FIELDS:  
5 Q All right. Mr. Gilhousen, thank you so  
6 much for your time this morning. You got  
7 questions that were asked of you by the attorney  
8 for the OMC and now representing the United States  
9 I'm going to go ahead and ask you hopefully a  
10 different set of questions at least initially.  
11 And then I might cover some areas that you  
12 previously had testimony regarding. Can you hear  
13 me clearly? Are these mics picking everything up?  
14 A I can, yes.  
15 Q Okay. Great. So in the very beginning  
16 of your testimony, Ms. Blake asked you how you  
17 prepared for your deposition, and you said that  
18 you conferred with Mr. Slade, Mr. Freeman and  
19 Mr. Ball; is that correct? In addition to  
20 Mr. May?  
21 A Yeah. Yeah I spoke to Rob, but we  
22 didn't -- we didn't have any lengthy dialog about  
23 the case. It was more coordinating with Kirk and  
24 that sort of thing. So -- but, yes, those are the  
25 people I spoke to.

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1 Q So to your recollection, no other  
2 attorneys for -- involved in this case other than  
3 Mr. Slade, Mr. Ball, and so I guess Mr. May just  
4 represents you, correct?  
5 A That's correct.  
6 Q When you talked about scheduling, do  
7 you recall initially getting the subpoena for this  
8 deposition?  
9 A Yes. It wasn't all that long ago, but,  
10 yes, I recall getting that subpoena.  
11 Q And I believe it was originally you  
12 were subpoenaed for a date that was before August  
13 30th to appear for your deposition testimony,  
14 correct?  
15 A I can't remember the exact date, but I  
16 believe we did ask for -- ask to push it out a  
17 week or so. A week or two.  
18 Q Okay. And I'm just trying to figure  
19 out why did you need to push it out?  
20 A I believe Kirk was on -- busy with  
21 other clients and we received very little notice  
22 or time between when I was served and when the  
23 actual deposition was. So it was just trying to  
24 get schedules lined up.  
25 Q So it wasn't a schedule conflict on

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1 your end, but maybe one on Mr. May's?  
2 A Yeah. It wasn't -- I had -- I think I  
3 may have had some travel in there, but, yeah, we  
4 were just trying to get a time that was a little  
5 further out that would work for everybody.  
6 Q And at that time, did you confer with  
7 any representatives from the defendants or their  
8 counsel as to the scheduling of when you would sit  
9 for your deposition or did you just coordinate  
10 with Mr. May alone?  
11 A Just with Mr. May. I don't recall any  
12 conversations with anyone else about the  
13 scheduling of that.  
14 Q Gotcha. Well, thanks for making  
15 yourself available. We do appreciate your time.  
16 A Yeah.  
17 Q When you talked about relying on legal  
18 counsel to work through the permitting matrix,  
19 which legal counsel worked with you or others at  
20 Tradewind Energy to create and maintain that  
21 permitting matrix?  
22 MR. BALL: Objection to form.  
23 THE WITNESS: Well, I believe  
24 Steve Willman and his team would have been  
25 actively involved in looking at that matrix and

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1 helping populate it and review it. Enel's  
2 counsel, Giuseppe, would look at that as part --  
3 part of the sale of the project. Sometimes even  
4 steering the ongoing development.  
5 And I think Lynn Slade and those guys  
6 probably looked at it as well. I can't be -- I  
7 can't say for sure who all commented on it, but  
8 it's ordinary course for the attorneys to review  
9 and add comments, et cetera.  
10 Q (By Mr. Fields) And to give a time  
11 frame to when this permitting matrix would have  
12 been worked on by all those individuals you just  
13 listed, attorneys and members of your team, would  
14 that have occurred in a time frame from October  
15 2013 to October 2014?  
16 MR. BALL: Objection to form.  
17 THE WITNESS: I don't have a good  
18 recollection of exactly when a matrix would have  
19 been created or if it was created. I've not  
20 looked at the MIPAs. I suspect the purchase  
21 agreement from Osage that are -- they already had  
22 the permits and had a permit matrix. I'm assuming  
23 it was included in that MIPA. Again, I have not  
24 looked at it, so permitting of that project  
25 occurred well before our involvement. So it would

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1 have been an ongoing living document even -- yeah,  
2 into the start of construction.

3 Q (By Mr. Fields) Okay. So to kind of  
4 put a finer point on it, you're saying that Wind  
5 Capital Group may have already had one when they  
6 sold the project to Tradewind based on the August  
7 22, 2013 MIPA because -- isn't it fair to say that  
8 Tradewind would have wanted to see some type of  
9 permitting that was done before you all bought a  
10 project that wasn't a greenfield?

11 MR. BALL: Objection to form.

12 THE WITNESS: Correct. Yes.

13 There would have been some level of diligence on  
14 the permitting status. Again, I can't comment as  
15 to whether there was or wasn't a permit matrix,  
16 but I -- I'd would be shocked if permitting wasn't  
17 addressed in the MIPA.

18 Q (By Mr. Fields) In considering  
19 permitting was one of your areas of responsibility  
20 at Tradewind when you all bought the project --  
21 when you all bought the Osage Wind project around  
22 August 22nd, 2013 from Wind Capital Group, surely  
23 you would have been involved in vetting and  
24 reviewing that at the time, correct?

25 A Yeah, we relied heavily on my developer

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1 and my permitting environmental lead to do that.  
2 But I would have been involved in communications  
3 with them about the status of the permits.

4 Q And that individual probably would have  
5 been Jenny Dean as your permitting environmental  
6 lead on your team?

7 A Yeah.

8 Q And so after that MIPA purchasing the  
9 project from Wind Capital Group in August of 2013,  
10 do you recall seeing a letter from the OMC  
11 directed to both CEOs of Wind Capital Group and to  
12 Tradewind Energy that was putting both entities on  
13 notice of the need for federal mining permits for  
14 the project?

15 MR. BALL: Objection to form.

16 THE WITNESS: I do not recall that  
17 letter.

18 Q (By Mr. Fields) [Okay, Michelle, can  
19 you pull up Exhibit 90.] This has previously been  
20 entered in the depositions in this case. It's  
21 Osage Wind Priv 427 through 29. This is a series  
22 of emails around October 11th, 2013.

23 [Can you scroll down so we can see  
24 what's really entailed here? Keep on going down.  
25 Let's just start from the beginning. Right

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1 there.]

2 This looks like the first email in this  
3 chain. It comes in from an attorney by the name  
4 of Ian Shavitz with Akin Gump, and he sends it to  
5 Mr. Freeman and Mr. Boyce and copies a number of  
6 individuals with Bureau of Indian Affairs email  
7 addresses and Osage tribe email addresses amongst  
8 others. And it's titled, "Information Request  
9 Applicability of Federal Mineral Estate  
10 Regulations to Construction of the Osage Wind  
11 project." [Okay, scroll down a little, Michelle,  
12 so he can kind of see the content of that email.  
13 Perfect.] Can you see that, Mr. Gilhousen?

14 A Yes.

15 Q Okay. I'll give you a second to look  
16 at that short paragraph and then we'll scroll up  
17 and go through the rest of the emails in this  
18 chain. Let me know after you've gotten through  
19 it.

20 A Okay.

21 Q So, again, I'm just giving you a  
22 context for additional questions. [But scroll  
23 up.] So after counsel for the OMC sends across  
24 this letter -- or this email with a letter,  
25 [scroll up] and we'll see that it was forwarded --

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1 some emails from Mr. Boyce to Mr. Knapp -- [and  
2 then keep going. And then right here, stop for a  
3 second. I guess scroll up a little so we can  
4 see.] It looks like an email from Wind Capital  
5 Group's general counsel, Mr. Knapp, to Mr. Freeman  
6 asking him who at Tradewind Energy and which  
7 external counsel should they be conferring with  
8 regarding the letter.

9 A Was this before -- was this email  
10 string before or after we closed on the  
11 acquisition of the projects?

12 Q Well, the date of your MIPA purchasing  
13 it from when Capital is executed, August 22nd,  
14 2013. So this is approximately two months later.  
15 But my question to you would be, you tell me.  
16 Just because a document was executed, had you all  
17 completed the transaction at that point? Two  
18 months later?

19 A Yeah, I was -- yeah, I don't know when  
20 -- I don't when the closing of -- the closing of  
21 that transaction was relative to the execution.

22 Q So how does that work typically on your  
23 projects? When there's a close, I mean, what's  
24 the usual lag, if any, between an execution and  
25 completion of a close of a sale?



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1 A It's entirely transaction specific. It  
2 could be --  
3 Q What's the --  
4 A -- signed -- it could be signed and  
5 closed and it could be a year later.  
6 Q Well, on this project do you recall it  
7 being a year later?  
8 A I don't recall. No, I'm not saying  
9 that. I don't recall.  
10 Q Okay.  
11 A I'm asking because I don't know when  
12 close was relative to execution of the MIPA. I  
13 don't know if it was the day of or some other  
14 time.  
15 Q No, I totally get it, and I'm with you.  
16 And so I -- that's what we're just finding out.  
17 Details. I appreciate it. [Okay, so we'll keep  
18 scrolling up.] So then it looks like Mr. Knapp  
19 emails Mr. Weigel and says, "See below." I guess  
20 Rob was out of office. [Keep scrolling.] And  
21 then Mr. Weigel loops you in, it looks to be maybe  
22 first time on August 10th, 2013, saying, "I  
23 shouldn't -- I suppose I shouldn't let things like  
24 this surprise me. Darren and Steve, will you guys  
25 start with this. Let's confer about whether or

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1 not PS needs to support this."  
2 Do you know what PS would be?  
3 MR. BALL: Objection to form.  
4 THE WITNESS: Whether -- what PS  
5 means?  
6 Q (By Mr. Fields) Yeah.  
7 A I'm assuming that's Paul Sinaly, but I  
8 can't say for sure.  
9 Q Ah, that's probably right. Fair  
10 enough. [Okay. Keep scrolling up. Thank you,  
11 Michelle.] So then we get to the last email in  
12 the chain where Darren Neil, I guess one of the  
13 other attorneys working with Willman at  
14 Polsinelli's. It says, "Lynn, we received the  
15 attached letter from the Osage Minerals Council.  
16 Would you be able to review and be available for a  
17 call tomorrow?" And you see that there's an  
18 attachment that's highlighted in blue. It's a pdf  
19 and then another HCM attachment there. Do you see  
20 that, Mr. Gilhousen?  
21 A Yes.  
22 Q And do you see that you're also copied  
23 on this email up above?  
24 MR. BALL: Objection to form.  
25 THE WITNESS: Yes.

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1 Q (By Mr. Fields) Okay. Perfect. [All  
2 right. You can take that down, Michelle.]  
3 And so now I'm going to show you  
4 Exhibit 41, what's been previously been entered in  
5 this case. It's Osage Wind 1948. It's the letter  
6 that was attached to that email dated October  
7 10th, 2013, from the Osage Minerals Council to the  
8 CEOs of Wind Capital Group and Tradewind Energy.  
9 So you can see on their letterhead it's  
10 coming from the Osage Minerals Council, and then  
11 you see the -- the two blocks of David Boyce for  
12 Wind Capital. [And then scroll down a little.]  
13 We've got Mr. Freeman with Tradewind. [And scroll  
14 down a little bit.] I want you to kind of get a  
15 feel -- this is a three-page letter but I'll --  
16 I'll break it up in chunks so you can kind of get  
17 context for it. [Could you scroll down a little  
18 bit more and just give him the content of the --  
19 perfect.] So here's the rest of the first page.  
20 I'll give you a second to look it over and then  
21 I'll ask you a couple of questions. Just let me  
22 know when you've gotten through it.  
23 A Okay.  
24 Q And so I'll represent to you that  
25 Mr. Shavitz had a drafting error and then while he

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1 did reference at the bottom of the second  
2 paragraph the CFR -- 25 CFR Sections 411 and 414,  
3 I'd represent to you that he followed that up with  
4 an email clarifying that he meant 211 and 214.  
5 But anyway, nevertheless. [Can you scroll on to  
6 the next page, Michelle, so he can see more?  
7 Great. Perfect.]  
8 A Okay.  
9 Q Okay. So -- [Okay, keep on going,  
10 Michelle. Fair enough. Keep scrolling down.]  
11 So, I think you could see up to Paragraph 4, so  
12 there's the rest.  
13 A Okay.  
14 Q Okay. [Keep on scroll --I think that's  
15 pretty much the end of it.] Okay, so now that  
16 you've kind of had a chance to see this, I gave  
17 you some context with the emails and you've had a  
18 chance to look this over. [Can you scroll back up  
19 to the first page? The content?] Do you recall  
20 receiving this letter about two months after the  
21 MIPA was executed between Wind Capital Group and  
22 Tradewind for the project?  
23 A Yeah, I don't -- I don't recall the  
24 letter, but, I mean, obviously, I was cc'd on it  
25 so I must have seen it.

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1 Q And so considering some of the

2 follow-up emails that you reviewed with Ms. Blake

3 earlier this morning, that's -- that kind of

4 seemed to spawn from this issue. Do you think

5 it's fair to say that the Osage Minerals Counsel

6 was putting both Wind Capital Group and Tradewind

7 Energy on notice that it believed that these

8 federal regulations that implicated mining

9 activities applied to the project?

10 MR. BALL: Objection to form.

11 THE WITNESS: I -- yeah, I would

12 -- what I just read I would say that that -- I

13 think they're requesting information. That's

14 really --

15 Q (By Mr. Fields) So from a permitting

16 -- okay. From a permitting perspective --

17 A I believe they had the information

18 already. I think this project was -- went through

19 a lengthy local permitting process at the county

20 level, and I think there was a lawsuit that had

21 been undertaken and settled in favor of the

22 project prior to this.

23 Q So do you have any knowledge what the

24 subject matter of an earlier lawsuit would have

25 been regarding this project?

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1 A I do not recall.

2 Q So if I represented to you that it

3 involved oil and gas mineral as opposed to mining

4 of hard rock minerals would you -- would you

5 understand that that's a separate issue and that

6 would not necessarily be related to the mining

7 that was implicated in this letter?

8 A No.

9 Q Okay. So you're saying that because

10 county permitting and a previous lawsuit had

11 already happened at the time this letter was sent,

12 did you believe at the time that you all didn't

13 need to do any more due diligence regarding this

14 type of permitting as the project moved forward?

15 MR. BALL: Objection to form.

16 THE WITNESS: That's -- that's not

17 what I'm saying. I'm just trying to recall

18 history leading up to this point in time. And I'm

19 sure there's subsequent documentation of follow-up

20 inquiries and things we may have done. Inquiries

21 with counsel, communications with -- with the

22 tribe, et cetera.

23 Q (By Mr. Fields) So -- and I appreciate

24 that from your -- you have --

25 A Yes.

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1 Q Absolutely. But at the same time I'm

2 trying to figure out what you knew at the time,

3 and so you mentioned a lawsuit, a previous lawsuit

4 and you mentioned county permitting. Do you

5 understand, and I'm sure you do, that there's

6 differences between state -- like local, county,

7 state, federal and tribal jurisdictions in

8 permitting?

9 A I understand the concept of which

10 you're talking about, yes.

11 Q But you only mentioned county

12 permitting. So was there some reason that you

13 thought that the county permitting was somehow

14 more controlling than federal permitting, for

15 example, on this project?

16 MR. BALL: Objection to form.

17 THE WITNESS: No, I'm not saying

18 one's more important than the other, no.

19 Q (By Mr. Fields) I guess I'm trying to

20 get you to acknowledge that there was federal

21 permitting requirements. An example of which

22 could have been, I don't know, an eagle take

23 permit from an environmental perspective, correct?

24 A I'm just -- I'm -- yeah, we would have

25 looked at all -- all information in front of us

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1 and worked with our expert staff and our legal

2 counsel and made the best decisions we could make

3 based on that information and professional

4 judgment.

5 Q And I appreciate that. But I guess you

6 said that when this letter came through that you

7 believed that you already had the permitting that

8 you needed, and that you already had a previous

9 lawsuit that had addressed some type of issue, and

10 so I'm trying to understand, if this letter

11 influenced your decision-making on whether

12 additional permits needed to be required?

13 MR. BALL: Objection to form. It

14 mischaracterizes his testimony.

15 THE WITNESS: That -- that wasn't

16 what I said.

17 MR. BALL: Objection to form.

18 THE WITNESS: I -- I was just

19 indicating that there were, I believe, prior

20 communications of information and that there had

21 been a prior lawsuit. I'm not -- I'm not saying

22 anything about the outcome of that or what was

23 tried, what wasn't, et cetera. I just -- just

24 facts.

25 Q (By Mr. Fields) No, I appreciate that.



<p>Page 122</p> <p>1 Earlier in your testimony when we were -- when Ms.  2 Blake showed you Exhibit 94, I think that you  3 might have had some pause, if you will, trying to  4 determine which of the two project certain emails  5 would have been applicable to.  6 So, like looking in the context of this  7 letter, did you have any concern that this is  8 applicable to the Osage Wind project, or do you  9 think it could also apply to the Mustang Run  10 project?  11 A With the reference to the Wind Capital  12 folks, I would have to believe it's the Wind  13 Capital Osage Wind project communication.  14 Q And were you aware at the time in  15 October of 2013 that the Osage Mineral estate  16 underlies all of Osage County and -- were you  17 aware of that?  18 A I believe -- yeah. I mean, I believe I  19 was aware of that at the time.  20 Q And so, I mean, did you -- did you  21 learn that from discussions with counsel? I guess  22 -- I imagine Modrall Sperling in that they were  23 the Native American like experts that you all  24 hired to assist in aspects of this project,  25 correct?</p>	<p>Page 124</p> <p>1 MR. BALL: Objection to form.  2 THE WITNESS: My comments prior  3 were about different email communication or  4 various communications that I just couldn't tell  5 from that line of documents whether it was  6 specific to Osage or to Mustang or both. I'm --  7 I'm not --  8 Q (By Mr. Fields) No, I appreciate that.  9 Okay, so at the same time, like, do you think that  10 you or Tradewind would have put more emphasis or  11 effort into a greenfield project like Mustang Run  12 that you all were developing as opposed to a more  13 fully developed project like Osage Wind that you  14 bought from Wind Capital Group?  15 MR. BALL: Objection to form.  16 THE WITNESS: We would not --  17 they're different -- it's a different project,  18 different job. Different activities involved on  19 our end when we're buying a mature project versus  20 a greenfield. So when you buy a greenfield --  21 when you start a greenfield you start from scratch  22 and go from there. When you're buying an existing  23 asset you start from the diligence on what the  24 party you're buying it from has done.  25 Q (By Ms. Fields) But because both</p>
<p>Page 123</p> <p>1 MR. BALL: Objection to form.  2 THE WITNESS: I can't tell you  3 where I learned about the surface rights versus  4 the mineral estate in Osage County specifically,  5 but I was aware that the mineral estate was held  6 in trust by the BIA for the benefit of the -- the  7 Osage Nation or -- I'm not sure if it's the Osage  8 Nation or the Mineral Council. But, yes, I was  9 kept aware of that some point along the way.  10 Q (By Mr. Fields) So, at the same time  11 it seemed like you were a little unsure when you  12 were speaking with -- with Ms. Blake about whether  13 or not these federal regulations that talked about  14 mining activities could potentially apply to both  15 the Mustang Run project, which is in Osage County,  16 and the Osage Wind project, which is in Osage  17 County.  18 MR. BALL: Objection to form.  19 Q (By Mr. Fields) So, do you -- do you  20 still have any question that you think that  21 somehow these federal regulations for mining would  22 not apply to the Mustang Run project if,  23 hypothetically, excavation work would have  24 happened for the turbines and infrastructure like  25 it did on the Osage Wind project?</p>	<p>Page 125</p> <p>1 projects were in Osage County, both of them  2 potentially implicated the Osage Mineral estate  3 underneath the surface, wouldn't some of that  4 diligence for both projects overlap in that there  5 is the possibility that you may need a federal  6 mining permit pursuant to what Mr. Shavitz is  7 outlining in his letter here?  8 A My recollection is is that we  9 collectively didn't believe we were mining, nor  10 did we need a mining permit for either project.  11 Q Prior to the project? So prior to the  12 purchase? Oh, --  13 MR. BALL: He said or/either.  14 E-I-T-H-E-R.  15 Q (By Mr. Fields) And what was the  16 earliest point that you acquired that knowledge  17 that a permit would not be required?  18 A I can't -- I can't say when that  19 exactly occurred.  20 Q Well, do you think it occurred before  21 this letter was sent on October 10th, 2013?  22 A I can't -- I can't speculate as to what  23 -- when -- when I came to that -- we collectively  24 came to that conclusion.  25 Q Okay. So earlier in your testimony you</p>

<p>Page 126</p> <p>1 mentioned in context of figuring out which of the</p> <p>2 emails that we were reviewing were implicating</p> <p>3 whether Osage Wind or Mustang Run, you said that</p> <p>4 there were plausible difference -- that</p> <p>5 differences between the projects would impact</p> <p>6 whether or not a sandy soil mineral permit could</p> <p>7 be required. And then you also said that you</p> <p>8 recalled spending a lot of time talking with</p> <p>9 counsel, not believing that mining was happening.</p> <p>10 That you all didn't need a permit and that you</p> <p>11 weren't told from the OMC that you needed a</p> <p>12 permit.</p> <p>13 Now that you've seen this letter dated</p> <p>14 October 10th, 2013, and seen the emails that were</p> <p>15 sent to you, do you believe that you want to</p> <p>16 update your testimony?</p> <p>17 MR. BALL: Objection to form.</p> <p>18 THE WITNESS: I don't think we</p> <p>19 were told that we need a permit. I believe we</p> <p>20 were told that if we were mining, we would</p> <p>21 potentially need a lease or a permit.</p> <p>22 Q (By Mr. Fields) Okay. Maybe so based</p> <p>23 on the semantics of what you're saying. But how</p> <p>24 about the cease and desist letter you also saw</p> <p>25 from Ms. Blake that was sent to Mr. Venturini from</p>	<p>Page 128</p> <p>1 pretty clear from the communications and from</p> <p>2 previous testimony. So would you admit --</p> <p>3 MR. BALL: Objection to form.</p> <p>4 THE WITNESS: I don't understand</p> <p>5 the question.</p> <p>6 Q (By Mr. Fields) Okay, I can rephrase.</p> <p>7 A second ago I believe you just said that you</p> <p>8 wouldn't have worked on this project after the</p> <p>9 MIPA was over. So September 17th, 2014 you</p> <p>10 wouldn't have been responsible for the project?</p> <p>11 A I -- we no longer owned the project and</p> <p>12 we were not responsible for the project. We were</p> <p>13 not responsible for construction. There may have</p> <p>14 been some assist -- we may have been there to</p> <p>15 assist to do certain discrete things. You'd have</p> <p>16 to look at the development agreement to see what</p> <p>17 those specific things could have been and then</p> <p>18 look further to determine whether any of those</p> <p>19 were actually requested or needed of us.</p> <p>20 Q And so this was not the only project,</p> <p>21 the Osage Wind project, that you all sold to Enel</p> <p>22 or Enel Green Power North America or Enel Kansas</p> <p>23 from 20 -- from 2006 through, I don't know, 2016,</p> <p>24 correct?</p> <p>25 A Correct.</p>
<p>Page 127</p> <p>1 the Bureau of Indian Affairs that was saying, stop</p> <p>2 the work on the project. You need this permit. I</p> <p>3 mean, at that point you clearly have to admit that</p> <p>4 you all were on notice that you needed the permit,</p> <p>5 correct?</p> <p>6 MR. BALL: Objection to form.</p> <p>7 THE WITNESS: I -- I wasn't in --</p> <p>8 I was no longer the owner of the -- our company</p> <p>9 was not the owner and didn't own the project and I</p> <p>10 wasn't -- yeah, that wasn't addressed to me, and I</p> <p>11 wasn't responsible for the construction.</p> <p>12 Q (By Mr. Fields) So you have ongoing</p> <p>13 duties after the sale of the MIPA occurred on</p> <p>14 September 17th, 2014, on a project that Tradewind</p> <p>15 developed for one of its minor shareholders, Enel</p> <p>16 Green Power North America, or Enel Kansas,</p> <p>17 correct?</p> <p>18 A I believe there -- you showed me a</p> <p>19 development agreement earlier. I don't know what</p> <p>20 the scope of it was. But I -- it appears there</p> <p>21 was a post closing development obligation, yes.</p> <p>22 Q And so it's true that certain employees</p> <p>23 from Tradewind would have continued working on the</p> <p>24 project after the date of the execution of the</p> <p>25 MIPA of September 17th, 2014. And I mean, that's</p>	<p>Page 129</p> <p>1 Q And so on those other projects, I mean,</p> <p>2 was it typical that even though you would have</p> <p>3 sold the assets to an underlying project that you</p> <p>4 developed that there may be some additional</p> <p>5 responsibilities that may be ongoing after the</p> <p>6 date based on the aspects of those individual</p> <p>7 projects, correct?</p> <p>8 A Yes.</p> <p>9 Q And so turning to the Osage Wind</p> <p>10 project, considering there were Enel Green Power</p> <p>11 North America board members as minority</p> <p>12 shareholders of the Tradewind, and Tradewind had</p> <p>13 just completed the MIPA to sell assets of the</p> <p>14 Osage Wind project to Enel Kansas, I mean, the</p> <p>15 coordination that was ongoing from August 2013</p> <p>16 through October 2014 are -- between the two MIPAs</p> <p>17 would have continued even though Tradewind had</p> <p>18 technically sold the asset to Enel Kansas,</p> <p>19 correct?</p> <p>20 MR. BALL: Objection to form.</p> <p>21 THE WITNESS: No. The -- our --</p> <p>22 we would -- we sold the project to Enel. They own</p> <p>23 the project. They're responsible for construction</p> <p>24 of the project and operations. We would have been</p> <p>25 in a support role to the extent there was a</p>

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1 development agreement in place that would have  
2 outlined the extent of our responsibilities.  
3 We -- our job was to develop projects,  
4 not to engineer and construct and operate. So we  
5 -- our job was to go work on other projects that  
6 needed our area of expertise, not to focus on  
7 engineering, means, methods, construction,  
8 construction management, operations.  
9 **Q (By Mr. Fields) No, I appreciate that,**  
10 **and frankly before the MIPA was even sold, or the**  
11 **MIPA was executed on September 17th, 2014, before**  
12 **that time period, for the year before that, you've**  
13 **already testified that, you know, Enel was in**  
14 **charge of the construction and they were the ones**  
15 **that were like running the construction because**  
16 **Tradewind didn't have that in it's -- in it's --**  
17 **that's not what you all did, correct?**  
18 MR. BALL: Objection to form.  
19 Misstates testimony.  
20 THE WITNESS: Correct.  
21 **Q (By Mr. Fields) Right. Okay.**  
22 **Exactly. So, I mean, the fact that Enel Green**  
23 **Power North America was already running the**  
24 **project's construction and engineering aspects**  
25 **before the MIPA was completed on September 17th,**

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1 **2014, I mean, they would have continued that after**  
2 **the MIPA was executed. You're just saying that**  
3 **Tradewind's development piece would have been**  
4 **completed?**  
5 A Correct.  
6 MR. BALL: Objection to form.  
7 **Q (By Mr. Fields) Okay. So --**  
8 A With the exception of whatever post  
9 closing obligations there might be outlined in the  
10 contracts.  
11 **Q No. And I -- and that's exactly right.**  
12 **And so at the same time if I was to tell you, to**  
13 **represent that Mr. Freeman testified a few days**  
14 **ago that some of Tradewind's employees, in his**  
15 **words, I might be misconstruing, were like loaned**  
16 **out to Enel Green Power North America or Enel**  
17 **Kansas to kind of like keep working on the project**  
18 **to get certain aspects done. It's possible that**  
19 **would have been in line with the agreements and**  
20 **ongoing responsibilities that you're saying could**  
21 **have been included in the development agreement or**  
22 **otherwise?**  
23 MR. BALL: Objection.  
24 Mischaracterizes Mr. Freeman's testimony, and  
25 objection to form.

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1 **Q (By Mr. Fields) You can answer.**  
2 A I would -- I don't know what to say  
3 other than point you to the development agreement.  
4 It says what our post closing development  
5 responsibilities are. The MIPA would state that  
6 as well. And we -- we wanted to do as little as  
7 possible post closing so we could focus on what  
8 our role was and our job was as business, which is  
9 developing wind projects and solar projects.  
10 So --  
11 **Q But, is he --**  
12 A And furthermore, just because it says  
13 we had some obligation in that document doesn't  
14 mean it actually was required or was done. To  
15 just -- I'm not trying to be controversial here.  
16 I'm just trying to make the point that we only did  
17 what we were asked to do contractually, nothing  
18 more, nothing less. And sometimes these documents  
19 have a litany of things that we might be asked to  
20 potentially do, but it wasn't applicable at the  
21 end of the day for any given -- that given  
22 project.  
23 **Q No, I appreciate that. I mean, one of**  
24 **those things that could fit that category is**  
25 **Ms. Blake showed you some construction**

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1 **responsibilities regarding keeping detailed**  
2 **records of the amount of certain excavations that**  
3 **were occurring. Do you think it's possible that**  
4 **keeping those records of excavations might have**  
5 **been one of the things that was listed in a**  
6 **contract but actually didn't get done?**  
7 MR. BALL: Objection.  
8 Mischaracterizes the evidence.  
9 **Q (By Mr. Fields) You can answer.**  
10 A To -- the answer is no. I mean, we --  
11 to my knowledge we never that was an EPC contract  
12 I believe I was shown earlier, and was not between  
13 Tradewind. It was between Enel or one of their  
14 subs and the contractor. We don't -- that's not  
15 our job. That's not what we -- what were involved  
16 in on this project.  
17 **Q Because Tradewind was more of the**  
18 **developer, not the construction manager so much?**  
19 A Yeah. We -- we didn't manage the  
20 detailed engineering and we didn't manage  
21 construction and we don't operate.  
22 **Q So considering -- I think you**  
23 **previously testified that this might have been the**  
24 **only project, the Osage Wind project, that**  
25 **Tradewind bought from Wind Capital Group. Did --**

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1 yeah, that's correct, right? It's the only one  
2 that you recall?  
3 A It's the only one I recall.  
4 Q So based on the experience that you all  
5 had at Tradewind with Wind Capital Group, did the  
6 -- the way this project unfolded lead to not  
7 wanting to accept any more projects from the Wind  
8 Capital Group going forward?  
9 MR. BALL: Objection to form.  
10 THE WITNESS: No.  
11 Q (By Mr. Fields) Relative to the -- oh,  
12 yeah. One question I had was, earlier in your  
13 testimony you said that, I think, when Ms. Blake  
14 asked you approximately how many projects I could  
15 guess you had worked in your tenure at -- wind  
16 farm projects specifically in your tenure at  
17 Tradewind, I'm not sure -- you kind of gave a  
18 number of what you would estimate that to be.  
19 So if you had to make an estimate,  
20 approximately how many projects off the top of  
21 your head that were wind farm projects did you  
22 work on at Tradewind in the development role?  
23 A I guess I -- I could only answer that  
24 if you give me more information as to what worked  
25 on means. I mean, I -- I -- again, I -- my team

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1 was responsible for siting wind projects all  
2 around the country and solar power projects, so we  
3 would look at many projects before we do a range  
4 of different varying levels of work on projects.  
5 Some -- some advance projects, you know, it was  
6 tens of projects. It could be 100 projects. The  
7 number of projects that we installed  
8 meteorological towers on and did preliminary  
9 investigative work on could be thousands.  
10 Q Okay. Let me be more specific then. I  
11 think that the capacity of this project was 150  
12 megawatts? Does that seem like a fair industry  
13 term, or am I totally misstating something?  
14 A No, you're -- you got it right.  
15 Q Okay. So off the top of your head, if  
16 you scaled -- or if you tied to think about how  
17 many other similar to size wind projects, I don't  
18 care about solar, I don't care about just  
19 meteorological siting or whatever, approximately  
20 how many similarly sized projects to the Osage  
21 Wind project do you recall developing in your  
22 tenure at Tradewind?  
23 MR. BALL: Objection to form.  
24 THE WITNESS: We -- you're talking  
25 about successfully developed projects that we --

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1 that ended up getting built?  
2 Q (By Mr. Fields) Yeah, that's --  
3 A By some other third party? There's  
4 probably -- shit -- sorry. Pardon my French.  
5 Five to 10,000 megawatts. And that number would  
6 have been much smaller at the time of this  
7 project. It may have been a thousand.  
8 Q So you -- okay. So you said five to  
9 10,000 megawatts. Is that the scope of the  
10 project or is that the number of projects you  
11 think that fit that category?  
12 A That's the total number -- the projects  
13 range from 100 megawatts, 50 megawatts to 500  
14 megawatts. So, yeah, it -- whatever five thousand  
15 divided by 200 is might give you an approximate  
16 number.  
17 Q Now you're making me do math. Jeez.  
18 Okay. I can do the math off line. I appreciate  
19 that.  
20 So maybe 25?  
21 A If --  
22 Q Roughly? Maybe?  
23 A Yeah, it could be 25, it could be 50.  
24 I just --  
25 Q Okay. It's probably less than 100?

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1 Okay.  
2 And so out of whatever that number is,  
3 25 to 100 wind projects of somewhat similar  
4 comparable size you only bought one from Wind  
5 Capital Group? And so --  
6 A Correct.  
7 Q Based on your experience with this  
8 project, the Osage Wind project, were there any  
9 aspects of purchasing a somewhat matured project  
10 that was not a greenfield that would have made you  
11 think twice after your experience on the Osage  
12 Wind project?  
13 MR. BALL: Objection to form.  
14 THE WITNESS: You mean think twice  
15 about buying a project from Wind Capital Group?  
16 Q (By Mr. Fields) Or another party as  
17 opposed to developing it on Tradewind's own as a  
18 greenfield?  
19 A No.  
20 Q So you're saying -- is it fair to say  
21 there was not additional complications of not  
22 doing the development in-house like a greenfield,  
23 and that by buying it in this example from Wind  
24 Capital Group didn't add levels of difficulty that  
25 you wouldn't have had if you were able to start it



<p>Page 138</p> <p>1 from scratch yourself?</p> <p>2 MR. BALL: Objection to form.</p> <p>3 THE WITNESS: Yeah. I would -- I</p> <p>4 would answer no to that question.</p> <p>5 Q (By Mr. Fields) Why?</p> <p>6 A There's advantages and disadvantages of</p> <p>7 buying a mature project versus an immature one.</p> <p>8 This would not -- we wouldn't have bought it if we</p> <p>9 didn't think it had advantages. I think that's</p> <p>10 kind of obvious because we bought it.</p> <p>11 Q But as you sit here --</p> <p>12 A I'm not try be to go flippant. I just</p> <p>13 -- there are advantages, right? So --</p> <p>14 Q No, I agree. But as you sit here seven</p> <p>15 years later in a deposition, your second</p> <p>16 deposition of your career, do you think it's</p> <p>17 possible that things could have been handled</p> <p>18 differently, at least from a permitting</p> <p>19 standpoint, in the year of 2013 to 2014?</p> <p>20 MR. BALL: Objection to form.</p> <p>21 THE WITNESS: No. I mean, I --</p> <p>22 this was a robust team of professionals.</p> <p>23 Professional attorneys, power project developers,</p> <p>24 finance people, turbine suppliers and everybody --</p> <p>25 the project got built, which everybody felt like</p>	<p>Page 140</p> <p>1 THE WITNESS: I'm not going to</p> <p>2 acquiesce to us doing anything wrong with respect</p> <p>3 to mining, so I --</p> <p>4 Q (By Mr. Fields) I'm not asking you to</p> <p>5 acquiesce anything. I'm asking you if you recall</p> <p>6 any other projects where a Native American tribe</p> <p>7 filed a lawsuit -- or believed that a lawsuit</p> <p>8 should have been filed to vindicate their rights</p> <p>9 where their minerals were being taken without a</p> <p>10 permit.</p> <p>11 MR. BALL: Objection to form.</p> <p>12 THE WITNESS: Not to my knowledge.</p> <p>13 I don't know any others.</p> <p>14 Q (By Mr. Fields) Okay. And, I mean,</p> <p>15 because there were unique issues to the Osage Wind</p> <p>16 project that required outside counsel to be</p> <p>17 procured in the Modrall Sperling firm there were</p> <p>18 aspects to this project that made it unique and</p> <p>19 different from maybe the other 25 to 100 similarly</p> <p>20 sized wind projects that you worked on, correct?</p> <p>21 MR. BALL: Objection to form.</p> <p>22 THE WITNESS: The Mustang Run</p> <p>23 project was another.</p> <p>24 Q (By Mr. Fields) But that never got</p> <p>25 developed, right?</p>
<p>Page 139</p> <p>1 we were doing things on the up and up and we -- it</p> <p>2 passed all -- all the scrutiny that any project</p> <p>3 would go through. So I feel very good about --</p> <p>4 about that project.</p> <p>5 Q (By Mr. Fields) So by -- the 25 to 100</p> <p>6 other projects of similar size and scope, how many</p> <p>7 of them resulted in federal litigation?</p> <p>8 MR. BALL: Objection to form.</p> <p>9 THE WITNESS: None that I'm aware</p> <p>10 of.</p> <p>11 Q (By Mr. Fields) And, I guess, how many</p> <p>12 of those 25 to 100 projects resulted in a Native</p> <p>13 American tribe suing to try to get compensation</p> <p>14 for minerals that were excavated without a permit?</p> <p>15 A Is that what -- is that what they're</p> <p>16 being sued for?</p> <p>17 Q Amongst other things, yes.</p> <p>18 A I thought it was crushing rock, but --</p> <p>19 sorry, what was the question?</p> <p>20 Q (By Ms. Blake) How many of the 25 to</p> <p>21 other 100 similarly sized projects resulted in</p> <p>22 lawsuits where Native American tribes were having</p> <p>23 their minerals taken without a permit that you can</p> <p>24 recall?</p> <p>25 MR. BALL: Objection to form.</p>	<p>Page 141</p> <p>1 A I think it was developed, yes. It was</p> <p>2 never built, but it was developed. Then there</p> <p>3 were -- there was another -- they were other</p> <p>4 projects in the county that -- under development</p> <p>5 with other reputable developers as well. But,</p> <p>6 yeah, I mean, projects have unique challenges.</p> <p>7 This -- this one had the unique attribute of</p> <p>8 having a mineral estate owned by -- governed by</p> <p>9 the BIA, or however you want to describe that,</p> <p>10 held by the BIA for the tribe, and surface rights</p> <p>11 that were, you know, traditional surface rights in</p> <p>12 the state of Oklahoma, which have their own -- its</p> <p>13 own rights of the -- of the surface -- of surface</p> <p>14 owners via accommodation doctrine, et cetera. So,</p> <p>15 yeah, projects have unique attributes, so this --</p> <p>16 I don't see it as anything beyond that.</p> <p>17 Q So if you -- if you're pretty steadfast</p> <p>18 in your belief, if I'm hearing you correctly, that</p> <p>19 you all didn't do anything wrong and that the</p> <p>20 mining wasn't something that you all thought you</p> <p>21 needed a permit for, why -- in your opinion, why</p> <p>22 didn't the Mustang Run project go forward, or any</p> <p>23 other projects in Osage County for that matter?</p> <p>24 MR. BALL: Objection to form.</p> <p>25 THE WITNESS: Just to correct --</p>



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1 correct what you said, I don't believe we were  
2 mining. So I don't believe any of us on our side  
3 thought we were mining. But -- what was the rest  
4 of the question?  
5 **Q (By Mr. Fields) Are you -- what's your**  
6 **opinion on why the Mustang Run project didn't go**  
7 **forward if this Osage Wind project was so**  
8 **successful and became operational?**  
9 MR. BALL: Objection to form.  
10 THE WITNESS: Well, because the --  
11 the Osage Nation was an active adversary of wind  
12 development in Osage County as evidenced by this  
13 lawsuit and the prior lawsuits. And so, yeah, we  
14 -- we thought it should be developed -- the  
15 Mustang Run project should be developed. We  
16 worked hard to get it permitted and got it  
17 permitted and it was just -- at the end of the day  
18 it -- it didn't get built and we chose to walk  
19 away from it.  
20 But it was -- it was -- I mean, I --  
21 there's no secret there. It was opposed by the  
22 Osage Nation.  
23 **Q (By Mr. Fields) No, I totally agree**  
24 **with you. There's no secret about that and, I**  
25 **guess, this project also by the federal**

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1 **government.**  
2 **You mentioned earlier that yourself,**  
3 **Mr. Freeman, Mr. Coventry, I guess had board seats**  
4 **on Tradewind; is that correct?**  
5 A At one point in time, yes. I can't  
6 remember if -- I don't think I had a board seat  
7 initially in the early years. I don't believe I  
8 did.  
9 **Q How about the years of 2013 to 2014?**  
10 A I -- I can't recall.  
11 **Q Well, when you -- when Tradewind was**  
12 **sold to Enel and Green Power North America in**  
13 **March of '19, didn't the shareholders get paid out**  
14 **in that purchase?**  
15 MR. BALL: Objection to form.  
16 THE WITNESS: You're asking  
17 whether or not the owners of Tradewind got paid  
18 when Tradewind was sold to Enel?  
19 **Q (By Mr. Fields) Yes.**  
20 A Yes.  
21 **Q And, I mean, you were one of those**  
22 **owners at that point, correct?**  
23 A Yes, I was a minority shareholder at  
24 that point.  
25 **Q And so, I mean, that would have been --**

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1 **I'm not asking you how much you made, but that**  
2 **would have been some type of financial payday,**  
3 **right?**  
4 A We sold our company. We didn't sell --  
5 this project had already been sold, so we were not  
6 selling --  
7 **Q I'm not asking you about -- I'm not**  
8 **asking you about Osage Wind. I'm asking about you**  
9 **personally. Did you have a financial gain when**  
10 **Tradewind sold in March of 2019 to Enel Green**  
11 **Power North America?**  
12 A Yes.  
13 **Q Okay. So going back in time, I mean,**  
14 **because you made some type of financial gain, you**  
15 **had an interest in, and a stake in making sure**  
16 **that Tradewind was successful, correct?**  
17 A Yes.  
18 **Q And so you're telling me you don't**  
19 **recall when you got a board seat on something that**  
20 **had been a career for like over, I don't know,**  
21 **almost two decades? You don't remember when you**  
22 **got a board seat?**  
23 MR. BALL: Objection to form.  
24 THE WITNESS: I do not remember  
25 when I got a board seat.

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1 **Q (By Mr. Fields) Okay.**  
2 A I mean, I -- yeah, I just don't  
3 remember that date for the purpose --  
4 **Q How many board members -- yeah. When**  
5 **-- when you were on the board, at least when it**  
6 **sold in March of 2019, how many board seats were**  
7 **there on Tradewind's board?**  
8 MR. BALL: Objection to form.  
9 THE WITNESS: Five.  
10 **Q (By Mr. Fields) And so, were three of**  
11 **those comprised of yourself, Mr. Coventry and**  
12 **Mr. Freeman?**  
13 A Correct.  
14 **Q And so you all would have had a**  
15 **majority stake in controlling board decisions if**  
16 **you all voted as a block?**  
17 A Incorrect.  
18 **Q Please explain.**  
19 A I -- I don't have the legal docs in  
20 front of me, but we did not have -- we did not  
21 have -- it wasn't a simple majority vote required  
22 to make material decisions for the business.  
23 **Q Did you all have different classes of**  
24 **ownership shares of Tradewind?**  
25 A Yes, at various points in time.

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1 **Q So it would have been a conflict --**  
 2 A I can't -- I can't speak to the nature  
 3 of those relative to Class A versus Class B, and I  
 4 can't tell you -- and too, I don't remember -- it  
 5 wasn't -- yeah, that was not my primary job.  
 6 **Q Okay. So your prior testimony you said**  
 7 **that once Enel Green Power North America made an**  
 8 **investment as a minority shareholder in Tradewind,**  
 9 **they got one or a couple of board seats, correct?**  
 10 A They -- to my recollection they always  
 11 had two board seats.  
 12 **Q And while you listed a couple of the**  
 13 **people that might have been on the board,**  
 14 **including Mr. Storch -- Mr. Storch, Volpe,**  
 15 **Venturini and the two Gorgios, no one else comes**  
 16 **to mind?**  
 17 A David Post may have been on the board  
 18 as well. I think I saw his name earlier in one of  
 19 these documents and that -- it jarred my memory  
 20 but I think he was on the board. I can't say for  
 21 certain.  
 22 **Q Correct. But he was another Enel Green**  
 23 **Power North America employee, correct?**  
 24 A Correct.  
 25 **Q Okay. And so even though you don't**

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1 **know when you got your board seat and you're not**  
 2 **sure how -- it wasn't a simple majority vote, at**  
 3 **some point in time if Enel Green Power North**  
 4 **America had two of the five board seats they would**  
 5 **at least know what's going on with Tradewind, what**  
 6 **projects are in the pipeline, et cetera?**  
 7 A Yes.  
 8 MR. BALL: Objection to form.  
 9 Assumes facts not in evidence.  
 10 **Q (By Mr. Fields) All right. So going**  
 11 **back to this letter that's in front of us still**  
 12 **from October 10th of 2013, it's your testimony**  
 13 **that this was not the OMC telling when Capital**  
 14 **Group and Tradewind that you all needed these**  
 15 **permits, it was them simply letting you all know**  
 16 **that these permits might be needed?**  
 17 A I believe it was a request for  
 18 information and, yes, letting us know if a permit  
 19 was required.  
 20 **Q Okay. [Can you scroll down, Michelle,**  
 21 **to the second page.] These bullet -- these**  
 22 **numbered points right here, they say, "Some**  
 23 **initial information from the Osage Minerals**  
 24 **Council requires to make the necessary regulatory**  
 25 **determinations includes the following.**

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1 **Number 1, Types of soil materials**  
 2 **located below the areas of excavation at the**  
 3 **project site.**  
 4 **Three, Dimensions of the foundations to**  
 5 **be excavated for; A, the construction of each**  
 6 **turbine; B, the construction of other project**  
 7 **features including but not limited to roads,**  
 8 **transmission line poles, towers, buildings,**  
 9 **meteorological towers collectively that ancillary**  
 10 **project features.**  
 11 **Four, Amount of cubic yards of the**  
 12 **solid materials that will be excavated by the**  
 13 **construction of; A, each turbine; and, B,**  
 14 **ancillary project features."**  
 15 **So those items one, three and four,**  
 16 **were those areas of information that Tradewind**  
 17 **would have been capable of answering and**  
 18 **responding to that were in Tradewind's area of**  
 19 **expertise?**  
 20 MR. BALL: Objection to the form.  
 21 THE WITNESS: We could have --  
 22 could have and may have provided assumptions with  
 23 respect to those numbers.  
 24 **Q (By Mr. Fields) To who?**  
 25 A To the Mineral Council or to the Osage

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1 Nation.  
 2 **Q You're saying hypothetically you could**  
 3 **you have, or you don't recall that Tradewind did?**  
 4 A I'm saying a couple of things. We --  
 5 we don't do the final engineering so the means and  
 6 methods of excavating, the final dimension of the  
 7 foundation, the amount of cubic yards, the type of  
 8 turbine, final solid materials location, that's  
 9 all final engineering -- determined by final  
 10 engineering.  
 11 So I -- we could provide an industry  
 12 standard that we might use an excavator to dig a  
 13 hole and the hole might be roughly X wide by X  
 14 feet, and this is generally the type of turbine.  
 15 But we don't have the detailed engineering to do  
 16 -- to provide the specifics.  
 17 **Q And Tradewind -- Tradewind --**  
 18 A That may be a nuance to you, but --  
 19 and, then, my other point is that I believe -- my  
 20 recollection is that this information was provided  
 21 to a whole host of stakeholders, including the  
 22 Osage Nation.  
 23 **Q So we looked at some exhibits earlier**  
 24 **that talked about blasting on the project. So if**  
 25 **there would have been differences in what was**

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1 expected and then what actually happened, once the  
 2 ground started to be disturbed, was that  
 3 information that was supplied to all these  
 4 stakeholders supplemented because blasting would  
 5 have been a different method of excavating than  
 6 just typical digging with equipment?  
 7 MR. BALL: Objection to form.  
 8 THE WITNESS: I can't -- I don't  
 9 know how to answer that. I --  
 10 Q (By Mr. Fields) So you don't know?  
 11 A Yeah, I don't -- I don't build wind  
 12 farms. I develop them. So I don't know -- I've  
 13 never done that job, so I don't know how or what  
 14 Enel would do, or a wind farm builder would do in  
 15 that instance. That's their job, is to be  
 16 compliant with their permits and regulatory  
 17 requirements while they're building it. It's not  
 18 our job.  
 19 Q So when you interfaced with the Enel  
 20 team from, I don't know, roughly August of 2013  
 21 through October of 2014, were you dealing with  
 22 individuals at Enel Green Power North America  
 23 directly or was like your outside counsel,  
 24 Mr. Willman, acting as a gatekeeper on this  
 25 specific issue regarding the need for a sandy soil

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1 mineral permit?  
 2 MR. BALL: Objection to form.  
 3 THE WITNESS: I don't see -- I'm  
 4 not sure what you're inferring there exactly. I  
 5 -- I would have engaged with counsel and Enel  
 6 staff as needed, as appropriate.  
 7 Q (By Mr. Fields) What I'm getting at is  
 8 you didn't need to go through Willman to talk to  
 9 employees of Enel Green Power North America  
 10 regarding the Osage Wind project. You would  
 11 interface with them directly. You didn't have to  
 12 -- correct?  
 13 A I -- yes. Yes. Yes. Unless there was  
 14 an attorney/client privilege matter, yes, we would  
 15 go straight to staff.  
 16 Q Got it. And so on this particular  
 17 project when it turns into aspects of  
 18 investigations into if a sandy soil mineral permit  
 19 was needed and Mr. Willman didn't have that  
 20 particular legal knowledge, do you recall dealing  
 21 directly with attorneys at Modrall Sperling?  
 22 A I do recall working directly with Lynn,  
 23 yes.  
 24 Q And as Lynn and his team were creating  
 25 their detailed legal analysis in the form of the

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1 memo that Ms. Blake put in front of you, a couple  
 2 versions of it, you don't recall providing facts  
 3 about the project and the details about the  
 4 activities that could be considered mining,  
 5 providing that to Modrall Sperling, do you?  
 6 MR. BALL: Objection to form.  
 7 THE WITNESS: I would have  
 8 provided whatever they requested of me to support  
 9 their work.  
 10 Q (By Mr. Fields) But I think your  
 11 previous testimony to Ms. Blake was you -- when  
 12 she showed you the memos and looked at them, you  
 13 didn't really recall reviewing or getting through  
 14 the analysis, other than the fact that you relied  
 15 upon it, correct?  
 16 MR. BALL: Objection to form.  
 17 THE WITNESS: I just -- I did -- I  
 18 haven't read -- I haven't read those memos so  
 19 maybe I did. I suspect I probably did years ago  
 20 but I just saw the header of the memo. I don't  
 21 know what it says. And I don't recall what I  
 22 provided or didn't provide that led to the  
 23 drafting of those.  
 24 Q (By Mr. Fields) But because you  
 25 testified --

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1 A They're our -- they're are our legal  
 2 counsel, so I -- I'm just suggesting if Lynn  
 3 needed something, we would have got him what he  
 4 needed.  
 5 Q Okay. But considering you've testified  
 6 pretty -- pretty consistently that Tradewind  
 7 didn't do construction work, that if there were  
 8 construction related facts about the project, they  
 9 would have probably been provided to Modrall by  
 10 someone or another entity besides Tradewind or  
 11 you, correct?  
 12 MR. BALL: Objection to form.  
 13 THE WITNESS: It depends on  
 14 whether or not we own the project or they own the  
 15 project and what -- where we are at in the  
 16 process.  
 17 Q (By Mr. Fields) Well, but I --  
 18 A I would have provided preliminary -- I  
 19 would have provided preliminary -- as I just  
 20 described earlier, we only had preliminary  
 21 information to provide, and whoever had the  
 22 detailed engineering, which would have been Enel,  
 23 they would have provided the specifics if they  
 24 were needed.  
 25 Q Okay. But, I mean, are you aware that

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1 before September 17th, 2014, that excavation work  
2 and even potential blasting was taking place on  
3 the project site while Tradewind owned the  
4 project?  
5 A I don't know specifically what -- what  
6 Enel was doing construction-wise. They have from  
7 time to time on various projects started some  
8 limited construction work prior to the closing of  
9 the sale of the project to Enel. And that would  
10 have been -- there would have been a document in  
11 place that gives them the rights and gives them  
12 the responsibility for compliance, et cetera,  
13 associated with that.  
14 Q And what -- what kind of document would  
15 that be called, or -- would that be the  
16 development agreement or something else?  
17 A I don't know. It may have been a  
18 letter agreement. I don't know.  
19 Q I mean, in past testimony we've heard  
20 about a partnership agreement between Tradewind  
21 and Enel for Tradewind to develop projects and  
22 Enel to purchase them if they're interested.  
23 That's not the type of agreement you're talking  
24 about right here, correct?  
25 MR. BALL: Objection to form.

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1 Mischaracterizes his prior testimony.  
2 THE WITNESS: Yeah, I -- it is  
3 generally consistent with that -- those  
4 agreements, yes.  
5 Q (By Mr. Fields) I guess I'm trying to  
6 understand which agreement you could be referring  
7 to that would talk about limited like construction  
8 activities before a project was sold and that  
9 would not be the MIPA, because the MIPA wouldn't  
10 have closed yet, correct?  
11 A It may be in the MIPA. It may have  
12 been --  
13 Q Well, it wouldn't -- it wouldn't have  
14 been in the September 17th, 2014 executed version  
15 of the MIPA, because the work was already ongoing.  
16 So it would have to be an agreement that was  
17 entered in to before that date, correct?  
18 A Assuming your timeline's right, yeah, I  
19 -- there -- there's -- there's some sort of  
20 documentation. If Enel wants to start  
21 construction before they close on the purchase of  
22 an asset, which happened a couple of times over  
23 our long history, there would have been some sort  
24 of a communication, a side letter or a  
25 construction agreement or something that would

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1 have given them the rights to do that, et cetera.  
2 I don't -- I can't -- I'm not being  
3 coy. I just don't remember what was done in this  
4 particular instance. What the extent of the  
5 pre-sale construction was. But I know -- I know  
6 we weren't responsible for building turbine  
7 foundations on the Osage project.  
8 Q And so on this particular project if --  
9 if the time lines were getting kind of crunched  
10 for whatever reason and the work needed to keep  
11 going at a good pace to meet certain deadlines, I  
12 mean, it would be beneficial to Enel to be doing  
13 some of that construction work before this MIPA  
14 with Tradewind would have closed, correct?  
15 MR. BALL: Objection to form.  
16 THE WITNESS: Yeah, there -- it's  
17 not uncommon at all for that to happen.  
18 Q (By Mr. Fields) Okay.  
19 [Okay, Michelle, can you pull up  
20 Exhibit 94? Number 2 in our group.] This is a  
21 previous exhibit I believe you've seen earlier  
22 today with Ms. Blake. It's an email from October  
23 25th, 2013. And I believe it's from you inquiring  
24 about the regs. [So scroll down, Michelle,  
25 please.]

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1 So, I believe you saw this earlier in  
2 the morning and it was initially initiated --  
3 [keep going.] An email from you on October 20 --  
4 right there -- [just scroll up a little bit] --  
5 October 25th, 2013, and you send this email  
6 directly to Mr. Slade, Mr. Scott, also at Modrall,  
7 Mr. Willman, Freeman and Weigel about mineral  
8 stats or status.  
9 "Can one of you send out the specific  
10 language from the statutes that describe what  
11 mineral" -- I can't read it because it's blocked.  
12 "Something -- related to activity does require a  
13 permit from the BIA." And so, I'm just curious,  
14 why do you think you were the person to have to  
15 inquire about -- why were you inquiring about  
16 these requiring a mineral permit from the BIA on  
17 October 25th, 2013?  
18 A Are you -- are you suggesting -- are  
19 you saying that the construction in order to be  
20 done and why -- why at Enel's?  
21 Q I'm not asking anything other than --  
22 my question is, like, why -- do you recall why you  
23 were the one to send this email and ask this  
24 question?  
25 A I do not have -- I don't know. I mean,



<p>Page 158</p> <p>1 I -- my team is responsible for development of the 2 project, not construction. So -- 3 <b>Q</b> Right. And we're just talking about 4 mining. So I guess my question is, this is two 5 weeks after you received email notice of a letter 6 that was sent to the CEOs of Wind Capital Group 7 and Tradewind Energy from the OMC saying you might 8 need federal mining permits under certain 9 regulations. And then two weeks later you send 10 this email to a host of attorneys and one 11 subordinate, Mr. Weigel, and your CEO, Mr. 12 Freeman, asking for the specific language of the 13 statutes. So my question is, why were you the one 14 to send this email two weeks later after receipt 15 of the OMC's letter? 16 <b>A</b> I can't -- I'm not sure what -- I don't 17 know. My -- it was part of my job, I guess, at 18 the time. 19 <b>Q</b> Okay. So in this instance it looks 20 like you didn't delegate it to Weigel or one of 21 your subordinates. You, for whatever reason, you 22 sent the email asking for the regs language, 23 correct? 24 <b>A</b> Correct. It looks like it says that. 25 <b>Q</b> [And then scroll up.] Well, it</p>	<p>Page 160</p> <p>1 need a permit. 2 <b>Q</b> (By Mr. Fields) And, I mean, I guess 3 it's fair to say that before Tradewind brought -- 4 bought the project in August of 2013, I would hope 5 at least that Wind Capital Group had some due 6 diligence where they looked into the issue. But 7 then after that point here, roughly two months 8 later, it looks like Tradewind, the -- the 9 subsequent owner, is then looking into this same 10 issue again. So I guess that's just doing 11 additional due diligence, correct? 12 <b>A</b> I think that's an indication of prudent 13 -- prudent development. 14 <b>Q</b> No, I agree with it -- with the fact 15 that prudent development would be investigating. 16 But I'm trying to figure out what happened next. 17 [Okay, so can you scroll -- or take 18 that down, Michelle? Can you, then, pull up 19 Exhibit -- what we have numbered 2.1, which is 20 Exhibit 200], which you've already seen Mr. Weigel 21 -- or Mr. Gilhousen. 22 This is Osage Wind Priv 672 through 73. 23 It's an October 25, '13 email from Mr. Slade to 24 Tradewind. So this is kind of as a follow-up to 25 the email chain that we just read through. [Keep</p>
<p>Page 159</p> <p>1 definitely does. 2 And then it looks like Mr. Slade 3 lays it out for you guys. And ironically, he 4 nails -- hits the nail on the end with two of the 5 statutes that are involved in this litigation. 6 And so after Mr. Slade laid out the language of 7 these regs, what did that -- how did that help you 8 since you had asked for them? 9 <b>MR. BALL:</b> Objection to form. 10 <b>THE WITNESS:</b> All I can tell you 11 is we -- we looked at this issue, worked with 12 counsel, and we came to the conclusion that we 13 were not mining and, therefore, we did not need a 14 mining permit or lease. 15 <b>Q</b> (By Mr. Fields) But is -- isn't it 16 fair to say that, I guess the letter from the OMC 17 on October 10th, 2013, it did at least serve the 18 purpose of forcing you all to investigate the 19 issue to determine whether or not you needed the 20 permit, correct? 21 <b>MR. BALL:</b> Objection to form. 22 <b>THE WITNESS:</b> I -- it appears -- 23 yeah. I mean, it appears we -- we stirred the pot 24 on this topic and came to the same conclusion we'd 25 come to before, that we weren't mining and didn't</p>	<p>Page 161</p> <p>1 scrolling down, Michelle, so he can see that this 2 is the similar set emails. Okay.] 3 So this has some of your outside 4 counsel that looks like -- talking about in the 5 subject line, Revisions to the draft of the letter 6 Wind Capital Group to OMC. This email, the bottom 7 one in the chain, is dated October 25th, 2013, 8 again, two weeks after you all -- you all being 9 Wind Capital Group and Tradewind received the 10 letter from the OMC putting you on notice that 11 these federal mining regs might be applicable, and 12 then these emails I represent to you are draft 13 revisions of a response letter. 14 [So scroll back up.] You'll see -- 15 [right there for a second. Would you go back down 16 a little bit. I apologize.] 17 You'll see -- do you know who David 18 Boyce is? 19 <b>A</b> He was one of the executives at Wind 20 Capital Group. 21 <b>Q</b> Right. And so his counterpart, I 22 believe, was Mr. Freeman at Tradewind. 23 I'd represent to you that, you know, 24 like a few days after this email chain, the 25 revisions got finalized and for whatever reason</p>



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1 Mr. Boyce was the one from Wind Capital Group who  
2 responded to the OMC's letter.  
3 Do you have any idea why the  
4 predecessor in interest of the project would have  
5 responded to the letter as opposed to the current  
6 owner at the time in October of 2013?  
7 MR. BALL: Objection to form.  
8 Assumes facts not in evidence. In fact, it's  
9 contrary to the evidence.  
10 THE WITNESS: Can -- can you  
11 confirm that we actually owned it at that time?  
12 Q (By Mr. Fields) You tell me. I mean,  
13 you guys had signed the MIPA on August 22nd, 2013.  
14 I mean, to me, I -- the executed version, I think  
15 pretty clearly conveys the ownership interest. So  
16 it's August to September to October, two months  
17 later, I mean, are you stating that you --  
18 A I -- the -- it either was or was not  
19 owned by Tradewind. It -- so the document says --  
20 Q Okay, but --  
21 A -- there's a formal closing date there  
22 would be a closing -- there's a closing. I don't  
23 know when it was. So maybe someone else can tell  
24 me what -- when it was. I just would like to know  
25 because I can't answer this question or the

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1 answer's different depending on whether we do or  
2 don't own it.  
3 Q (By Mr. Fields) Okay. Well, maybe  
4 your counsel, or maybe the defendants counsel can  
5 cross you on this after I'm done. But I guess my  
6 thing is, let's say that Wind Capital still was  
7 the owner. Would it have surprised you that at  
8 that point two months after the MIPA had been  
9 executed but maybe not closed, that Wind Capital  
10 would have been the entity to send the response to  
11 the OMC about why it didn't need this permit?  
12 A Not at all. That would be standard  
13 procedure.  
14 Q Okay. Now the other hand. Scenario 2.  
15 If the MIPA had closed and been executed on August  
16 22nd, 2013, two months later, while Tradewind's  
17 the owner, can you think of why the former owner  
18 then in that scenario would have been responding  
19 about why a certain project that it used to own  
20 didn't need a permit?  
21 MR. BALL: Objection to form.  
22 Assumes facts not in evidence.  
23 Q (By Mr. Fields) You can answer.  
24 A I can't speculate other than to say  
25 that would not be unusual for the party you bought

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1 a project from to -- if they've got the  
2 relationship and the history to make that  
3 communication.  
4 Q Well, in this instance, you said that  
5 this is the only time that you ever bought a  
6 project from Wind Capital Group. So if that was  
7 the case and that Tradewind was the owner in  
8 October 25th, 2013, you're saying it wouldn't have  
9 been unusual if you had a history of working  
10 together?  
11 MR. BALL: Objection. Form.  
12 Mischaracterizes his testimony.  
13 MR. MAY: I object. That's not  
14 what he answered.  
15 Q (By Mr. Fields) Okay. So can you  
16 please explain to me why that's an industry  
17 standard or something that would have happened if  
18 you had a previous working relationship?  
19 MR. BALL: Objection to form.  
20 Mischaracterizes the witness's testimony.  
21 MR. FIELDS: Court Reporter, can  
22 you please restate what his answer was to my prior  
23 question so I can attempt to not misstate whatever  
24 he said?  
25 THE REPORTER: I have no idea

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1 which answer you're wanting me to read.  
2 MR. FIELDS: I want you to read the  
3 answer to the second scenario question where I ask  
4 him if Tradewind was the owner of the project but  
5 Wind Capital Group sent the letter response in  
6 October.  
7 (The pending question was read back by the  
8 reporter).  
9 Q (By Mr. Fields) My question to you now  
10 is, Mr. Gilhousen, why would that not be unusual?  
11 A Because they have -- the prior owner  
12 has the history. They've done all of the work.  
13 They have the relationship with whoever the -- the  
14 agency is or entity is that they're corresponding  
15 with. It's -- that's --  
16 Q Okay.  
17 A -- not uncommon.  
18 Q But from October 25th, 2013, do you  
19 recall any additional direct interactions that  
20 Tradewind had with the Osage Minerals Council  
21 regarding this project?  
22 MR. BALL: Objection to form.  
23 THE WITNESS: I do not recall one  
24 way or the other.  
25 Q (By Mr. Fields) And so since you all

<p style="text-align: right;">Page 166</p> <p>1 -- Tradewind had bought the project and you wanted</p> <p>2 to, I think, for it to be successful, wouldn't you</p> <p>3 -- wouldn't it be prudent to attempt to interact</p> <p>4 directly with members of the local community that</p> <p>5 it's going to be impacting?</p> <p>6 MR. BALL: Objection to form.</p> <p>7 THE WITNESS: I know I met with</p> <p>8 the Osage Nation, the Mineral Counsel and the then</p> <p>9 chief of the tribe. I can't tell you when the</p> <p>10 date was. I think it was with respect to the</p> <p>11 Mustang Run project, but I can't tell you with --</p> <p>12 if Osage was already under construction or not.</p> <p>13 But that meeting did occur.</p> <p>14 Q (By Mr. Fields) How did it go?</p> <p>15 A Very well.</p> <p>16 Q Why would you say that?</p> <p>17 A I seem to recall they were interested</p> <p>18 in seeing the Mustang Run project proceed, and we</p> <p>19 walked away from it with a positive sense of our</p> <p>20 -- our ability to reengage with Osage Nation and</p> <p>21 to kind of re, I guess, establish a fresh</p> <p>22 relationship with them as Tradewind aside from the</p> <p>23 Wind Capital Group's relationship with them that</p> <p>24 appeared to be adversarial.</p> <p>25 Q So would that have been one of the</p>	<p style="text-align: right;">Page 168</p> <p>1 think it was about Mustang Run, not about the</p> <p>2 Osage project. But it's been ages since that</p> <p>3 meeting occurred.</p> <p>4 Q No, I totally get it. Do you recall</p> <p>5 anyone else from Tradewind or Enel who was in that</p> <p>6 meeting with you?</p> <p>7 A Steve Willman was in the meeting with</p> <p>8 me. I don't recall if there were other Tradewind</p> <p>9 staff people in that meeting. I think there was a</p> <p>10 person from GRDA in that meeting and</p> <p>11 representatives from the tribe and Mineral</p> <p>12 Council.</p> <p>13 Q Do you think it could have happened</p> <p>14 maybe in 2015 after this lawsuit was filed?</p> <p>15 A I can't -- I honestly do not know when</p> <p>16 it happened.</p> <p>17 Q No, I'm with you. And I appreciate you</p> <p>18 trying to remember.</p> <p>19 So I think you mentioned in your</p> <p>20 previous testimony that Tradewind would have</p> <p>21 relied some on Wind Capital Group as the initial</p> <p>22 developer of the project. And maybe having some</p> <p>23 relationships built with the surface owners that</p> <p>24 were leasing their land to Osage Wind to put the</p> <p>25 project in on. And so, do you recall having any</p>
<p style="text-align: right;">Page 167</p> <p>1 reasons why you all -- Tradewind might have</p> <p>2 preferred for Wind Capital Group to send the</p> <p>3 response to the October 10th, 2013 letter that</p> <p>4 basically said that a permit wasn't needed? Would</p> <p>5 that have been the motivation?</p> <p>6 A What -- no.</p> <p>7 (At this time there was a brief</p> <p>8 interruption by the reporter)</p> <p>9 Q (By Mr. Fields) So if that meeting</p> <p>10 that you had with the chief or the OMC was before</p> <p>11 this letter on October 10th, 2013, wouldn't you</p> <p>12 say that the October 10th, 2013 letter did not</p> <p>13 comport with the good feelings that you said that</p> <p>14 you felt walking away about the Mustang Run</p> <p>15 project?</p> <p>16 MR. BALL: Objection to form.</p> <p>17 THE WITNESS: I made no -- I made</p> <p>18 no statement about when that meeting with the</p> <p>19 tribe occurred. I don't recall.</p> <p>20 Q (By Mr. Fields) Well, do you think it</p> <p>21 occurred before you closed on the MIPA buying the</p> <p>22 project from Wind Capital?</p> <p>23 A I -- I have no recollection.</p> <p>24 Q Who else was in the --</p> <p>25 A I think -- I think it was about -- I</p>	<p style="text-align: right;">Page 169</p> <p>1 meetings or direct communications with any of</p> <p>2 those surface owners that leased the land to Osage</p> <p>3 Wind for the project?</p> <p>4 A I don't remember any of those specific</p> <p>5 relationships or names. It's possible I did, but</p> <p>6 I don't -- I don't recall.</p> <p>7 Q How about Mr. -- how about Mr. Kane?</p> <p>8 Do you -- do you recall ever communicating with</p> <p>9 Mr. Kane about the project?</p> <p>10 A That name sounds familiar, yes.</p> <p>11 Q And how about, do you -- do you recall</p> <p>12 asking Mr. Kane to appear in front of the OMC?</p> <p>13 A I do not.</p> <p>14 Q Do you recall ever attending any OMC</p> <p>15 meetings yourself?</p> <p>16 A No. Nothing other than the meeting</p> <p>17 with the chief and the OMC.</p> <p>18 Q So you don't recall -- you don't recall</p> <p>19 ever -- did you -- were you aware that Mr. Kane</p> <p>20 appeared before the OMC and --</p> <p>21 A I don't recall that. No, I don't</p> <p>22 recall that.</p> <p>23 Q And so, would it be fair to say --</p> <p>24 A I'm not saying it didn't happen. I</p> <p>25 just don't recall it.</p>

<p>Page 170</p> <p>1 Q Okay. Yes, sir.</p> <p>2 Do you recall ever asking Mr. Kane</p> <p>3 about the need to get a mineral or a leasing</p> <p>4 permit for the project?</p> <p>5 A I do not, no.</p> <p>6 Q Did you know that Mr. Kane was a lawyer</p> <p>7 and a judge in Osage County?</p> <p>8 A That sounds familiar, but I can't say</p> <p>9 definitively.</p> <p>10 Q Fair enough. I mean, it's all</p> <p>11 relative, I guess, but Osage Wind -- Osage is not</p> <p>12 a big county. They don't have that many people in</p> <p>13 there, but I believe -- I believe Mr. Kane might</p> <p>14 have been the district court judge of the county</p> <p>15 at the time. Were you aware of that?</p> <p>16 A I -- I can't -- I don't know. It</p> <p>17 sounds familiar that he was involved in legal work</p> <p>18 but that's about as much as I remember now that</p> <p>19 you're saying that. But I don't remember any</p> <p>20 specifics.</p> <p>21 Q Would it have been a positive thing for</p> <p>22 the development of the project to have someone</p> <p>23 like a sitting judge to be an advocate for the</p> <p>24 project in a local community like Pawhuska,</p> <p>25 Oklahoma?</p>	<p>Page 172</p> <p>1 Q Okay. Do you -- I think you said in</p> <p>2 your testimony, or you represented that it was</p> <p>3 your belief at the time in October -- in 2013 and</p> <p>4 2014 that mining was not occurring on the project</p> <p>5 site, correct?</p> <p>6 A Correct.</p> <p>7 Q Are you aware that now in 2021 the 10th</p> <p>8 Circuit Federal Court of Appeals has found that</p> <p>9 the work that was done, the excavation, the</p> <p>10 sorting, the crushing, the use the of that rock</p> <p>11 was in fact mining and required a federal permit?</p> <p>12 MR. BALL: Objection to form.</p> <p>13 Assumes facts not in evidence.</p> <p>14 THE WITNESS: I'm not aware of the</p> <p>15 specifics of what was determined by the court.</p> <p>16 Q (By Mr. Fields) Okay. Were you aware</p> <p>17 that at least what the court determined was mining</p> <p>18 was the same federal regulations that you were</p> <p>19 asking about in October of 2013 in your emails</p> <p>20 that Mr. Slade responded to and provided upon your</p> <p>21 request?</p> <p>22 A No.</p> <p>23 Q [Okay, Michelle can you take down this</p> <p>24 exhibit and pull up the next one? Exhibit 91.]</p> <p>25 Mr. Gilhousen, I believe this is an</p>
<p>Page 171</p> <p>1 MR. BALL: Objection to form.</p> <p>2 THE WITNESS: Judges are judges.</p> <p>3 I mean, you'd have to ask him. I -- I don't know</p> <p>4 how to answer that.</p> <p>5 Q (By Mr. Fields) Well, I guess he was</p> <p>6 also a surface -- one of the surface owners, so I</p> <p>7 -- I imagine he would have been in favor of the</p> <p>8 project. So what I'm getting at is, it would have</p> <p>9 been helpful to have a surface owner who was</p> <p>10 interested in the project who also happened to</p> <p>11 have a position of prominence in the community</p> <p>12 potentially that would help development, right?</p> <p>13 A I would say that's probably not a bad</p> <p>14 thing. He would obviously have to deal with</p> <p>15 whatever conflicts he might have if what you're</p> <p>16 saying is true. But yeah, having advocates --</p> <p>17 active advocates, advocates for a project is good,</p> <p>18 yes.</p> <p>19 Q Going back to your meeting with the</p> <p>20 GRDA about Mustang Run and the OMC and the chief,</p> <p>21 I mean, if you walked away from that meeting with</p> <p>22 a positive feel, do you recall any discussion in</p> <p>23 that meeting at all going towards the Osage Wind</p> <p>24 project and concerns that the OMC had?</p> <p>25 A No.</p>	<p>Page 173</p> <p>1 exhibit you've previously seen from Ms. Blake.</p> <p>2 It's previously been entered as Exhibit 91. It's</p> <p>3 Osage Wind Priv 357 through 58. It's an April</p> <p>4 25th, 2014 set of emails that comprise two months</p> <p>5 worth of -- I guess of activities. They began in</p> <p>6 February of 2014 with Mr. Larson emailing a guy's</p> <p>7 name I'll butcher. Blickensderfer, or something</p> <p>8 else. [Michelle will scroll down and show it to</p> <p>9 you again. Thank you, Michelle.]</p> <p>10 Okay, so, I know we talked about this</p> <p>11 earlier but I just had a few follow-up questions.</p> <p>12 So you said that Justin Larson was an engineer who</p> <p>13 did design and other work and he was one of your</p> <p>14 -- you supervised him, right?</p> <p>15 A Correct.</p> <p>16 Q But you don't recall why Mr. Larson</p> <p>17 reached out to Mr. Blickensderfer seeking this</p> <p>18 information on this permit?</p> <p>19 A I do not.</p> <p>20 Q And so would Mr. Larson at the time in</p> <p>21 April of 2014, have the autonomy to inquire on his</p> <p>22 own without your oversight regarding a permit that</p> <p>23 the OMC six months earlier had said that you guys</p> <p>24 need, but you claim that you had legal advice that</p> <p>25 made you think that you didn't need?</p>

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1 MR. BALL: Objection to form.  
2 Misstates the evidence.  
3 THE WITNESS: He was -- it was  
4 within his purview to ask about anything he  
5 thought was prudent.  
6 Q (By Mr. Fields) Okay. But if you were  
7 so confident that you all didn't need the permit  
8 and you were getting memos from counsel as to  
9 conclusions that said you didn't need the permit,  
10 why six months later are you all still trying to  
11 figure out details about this permit that you  
12 don't need?  
13 MR. BALL: Objection to form.  
14 THE WITNESS: I don't know why. I  
15 guess you could maybe ask him. Maybe there was --  
16 there's probably some reason for it. I don't know  
17 what it is. Maybe it's just being -- again,  
18 double-checking and triple-checking and belts and  
19 suspenders.  
20 Q (By Mr. Fields) Well, you said that he  
21 reported to you, and so you're ultimately  
22 responsible for Tradewind's permitting, but you're  
23 saying you don't recall why he was still seeking  
24 out information on the permit?  
25 MR. BALL: Objection to form.

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1 THE WITNESS: Yeah, I --  
2 Q (By Mr. Fields) You can answer.  
3 MR. BALL: It's the third time he  
4 answered it.  
5 THE WITNESS: I said I do not know  
6 why he sent this email.  
7 Q (By Mr. Fields) Do you think that  
8 Mr. Larson was unsure if you all may need the  
9 permit?  
10 MR. BALL: Objection to form.  
11 Calls for speculation. Misstates the evidence.  
12 Q (By Mr. Fields) You can answer.  
13 A He asked the question. I don't know  
14 why he was asking the question. I don't know what  
15 he thought or didn't think. He was an engineer.  
16 They ask questions.  
17 Q Well, you're an engineer, too. I mean,  
18 you might not have been performing that role in  
19 this particular company, but you said you were a  
20 civil engineer, correct?  
21 A By schooling.  
22 Q And so in April of 2014, are you aware  
23 of any of your other subordinates on your team who  
24 were unsure of whether or not Tradewind needed the  
25 permit in question?

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1 MR. BALL: Objection to form.  
2 THE WITNESS: I am unaware.  
3 Q (By Mr. Fields) Did you ask any of the  
4 members on your team if they thought that you all  
5 might need the permit and maybe the legal analysis  
6 from outside counsel was wrong?  
7 MR. BALL: Objection to form.  
8 THE WITNESS: I don't know.  
9 Again, we -- we came to the conclusion through  
10 proper diligence that we weren't mining and didn't  
11 need a permit. So I can't comment as to a one-off  
12 email when I don't have -- I don't know why he  
13 asked it, and --  
14 Q (By Mr. Fields) Okay.  
15 So when did you -- when did you  
16 personally form the opinion that the permit wasn't  
17 needed?  
18 MR. BALL: Objection to form.  
19 THE WITNESS: I believe that  
20 question's already been asked.  
21 Q (By Mr. Fields) So what's the answer?  
22 A I don't recall when I formulated that  
23 decision. That --  
24 Q [Okay, scroll up, Michelle. No, not  
25 that far. Go back down again.]

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1 So, you'll note that the next email,  
2 Mr. Weigel or -- is forwarding this to Mr. Neil,  
3 Mr. Willman, your outside counsel at Rouse Frets  
4 and to you again, and saying, "FYI." [And then  
5 scroll up.] Then outside, or general counsel,  
6 Mr. Willman, is forwarding this on to your  
7 specialized outside counsel to deal with Native  
8 American issues and including Freeman, yourself,  
9 Mr. Neil, Mr. Weigel letting them know that  
10 Mr. Willman has received these reports about BIA  
11 permitting from this engineering company and he --  
12 he would appreciate their input. Because you were  
13 included in this email, do you recall Modrall  
14 Sperling providing input on these attachments that  
15 were forwarded to them on April 25th, 2014?  
16 A No.  
17 Q Okay. All right, we'll keep that in  
18 mind. We're going to come back to more questions  
19 about this later, specifically regarding  
20 Mr. Scott.  
21 One of those -- one of those  
22 attachments, the first one, is labeled Osage Wind  
23 Mineral Permit pdf. Do you see that in blue?  
24 A Yes.  
25 Q Okay. [Can you take this down,



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1 Michelle. And then can you pull up 3.2. Exhibit  
2 93.] Previously entered in this deposition and  
3 other depositions. Osage Wind Priv 361. This is  
4 one of those two attachments -- this is what we  
5 looked at earlier with Ms. Blake. The procedures  
6 for obtaining a sandy soil and rock mining permit,  
7 Osage County, Oklahoma. Do you see that at the  
8 top of it it has the U.S. Department of Interior  
9 title and like header, if you will?

10 A Yes.

11 Q Okay. So before this Osage Wind  
12 project were you familiar with the Department of  
13 Interior or the BIA being a federal agency?

14 A Yes.

15 Q In what context?

16 A We worked with Fish and Wildlife  
17 Service on multiple projects, and I was -- I  
18 don't know how I was aware. I just was, I guess,  
19 casually aware that BIA was part of the federal  
20 government.

21 Q But at the time you understood that the  
22 Department of Interior and BIA were U.S. federal  
23 government entities and separate and apart from  
24 the Osage Minerals Council or the Osage Nation,  
25 which is a sovereign government, correct?

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1 MR. BALL: Objection to form.

2 THE WITNESS: I'm not sure -- I  
3 mean, I'm aware that they're separate but I'm not  
4 sure I'm aware of what -- of the nuances of the  
5 government relationship with BIA and the tribe.  
6 It is a black box to me as to what exactly how  
7 that relationship works and what --

8 Q (By Mr. Fields) No, I hear that. But,  
9 I mean, that's one of the reasons why -- probably  
10 why you guys engaged Modrall Sperling, right?  
11 Because that's some of their expertise they bring  
12 to the table that interplay between the tribes and  
13 the federal government?

14 A I think that's accurate, yes.

15 Q So when you looked at this earlier with  
16 Ms. Blake, I mean, I know you've received probably  
17 thousands of emails since then, seven years later,  
18 but at the time considering Mr. Larson had gotten  
19 it and thought it was important enough to forward  
20 to you and then it got forwarded on to outside  
21 counsel and your CEO and your other ownership  
22 partners at Tradewind, at the time what did you  
23 think the importance of this particular document  
24 attachment was?

25 MR. BALL: Objection.

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1 Mischaracterizes the evidence.

2 THE WITNESS: I believe we took  
3 all communications seriously and engaged counsel  
4 and revisited whatever questions were being asked  
5 and what the communication said in the context of  
6 all of the other communications and diligence we  
7 had done.

8 Q (By Mr. Fields) So not knowing or  
9 recalling when you formed the opinion that the  
10 permit wasn't needed, would you say that receipt  
11 of this procedures for obtaining the permit in  
12 question, did that help you further inform your  
13 opinion whenever you made it?

14 MR. BALL: Objection to form.

15 THE WITNESS: I'm not sure if it  
16 did or it didn't.

17 Q (By Mr. Fields) Or is that why you  
18 were forwarding it on to counsel, so they could  
19 factor it into their analysis?

20 MR. BALL: Objection to form.

21 Mischaracterizes the record.

22 Q (By Mr. Fields) You can answer the  
23 question.

24 A Can you ask the question again?

25 Q Were you forwarding it on to outside

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1 counsel so they could factor this into their legal  
2 analysis?

3 MR. BALL: Same objection.

4 THE WITNESS: Again, I think we  
5 were just, I think, doing what we normally do,  
6 which is take communications seriously and engage  
7 counsel when appropriate and ask the relevant  
8 questions in the context of what -- what we know  
9 to date on a project and what our expectations --

10 Q (By Mr. Fields) No, and I -- I totally  
11 appreciate that, but one of your subordinates went  
12 out and sought out this information specifically.  
13 So I'm trying to understand if you under -- if you  
14 know why that information that your subordinate  
15 sought out was then important enough to forward on  
16 to your outside counsel, who is specifically  
17 giving you legal advice on the issue in question?

18 MR. BALL: Objection to form.

19 THE WITNESS: I -- yeah, I guess I  
20 don't understand how to answer the question. I  
21 don't even know --

22 Q (By Mr. Fields) So --

23 A I don't know why -- why Justin made the  
24 inquiry. I don't have the background as to what  
25 led up to that, what triggered it, what he was



<p>1 thinking at the time.</p> <p>2 <b>Q Okay.</b></p> <p>3 A I mean, he's a free thinker. He could</p> <p>4 do -- I don't know if it was him just deciding one</p> <p>5 day to ask that question or if there was some</p> <p>6 prompt or some other communication that stirred</p> <p>7 the pot on that conversation. I suspect it was</p> <p>8 the former.</p> <p>9 <b>Q Gotcha. I appreciate it. [Okay,</b></p> <p>10 <b>Michelle, you can take that down. Can you pull up</b></p> <p>11 <b>Number 4 in our grouping?] I don't think this has</b></p> <p>12 <b>previously been listed as an exhibit, and so I'm</b></p> <p>13 <b>not sure exactly what number we're at now, but I</b></p> <p>14 <b>think we're at like -- [you said 204?] Okay.</b></p> <p>15 <b>This will be Exhibit 204. This is another email</b></p> <p>16 <b>chain. This one's from September 30th, 2014, five</b></p> <p>17 <b>-- roughly five months after the last email we</b></p> <p>18 <b>just looked at where you guys were forwarding on</b></p> <p>19 <b>the procedures for obtaining a sandy soil mining</b></p> <p>20 <b>permit to outside counsel. This is Osage Wind</b></p> <p>21 <b>Priv 294 through 97. [Scroll down to the bottom,</b></p> <p>22 <b>please. I guess that's the end. Good. Okay,</b></p> <p>23 <b>scroll back up so we can give Mr. Gilhousen some</b></p> <p>24 <b>context.]</b></p> <p>25 <b>Mr. Gilhousen, are you familiar with</b></p>	<p>Page 182</p> <p>1 <b>whole host of people at Enel Green Power North</b></p> <p>2 <b>America with the subject of Bureau of Indian</b></p> <p>3 <b>Affairs on September 30th, 2014. And it says,</b></p> <p>4 <b>"EGP as owner will call back the BIA. And on the</b></p> <p>5 <b>agenda, one, do we need a rock crushing permit</b></p> <p>6 <b>with the minerals counsel for backfill of</b></p> <p>7 <b>foundations. Two, if so, can we get it? Three,</b></p> <p>8 <b>if not, should we prepare anyway for the strategy</b></p> <p>9 <b>for response? And four, who at EGP is going to</b></p> <p>10 <b>call the BIA." So, I'm not sure when it closed</b></p> <p>11 <b>but your MIPA was executed on September 17th,</b></p> <p>12 <b>2014, so this might be two weeks later. Do you</b></p> <p>13 <b>have any opinion on why Enel's project manager,</b></p> <p>14 <b>Mr. DiMarzio, would be wondering if a permit was</b></p> <p>15 <b>needed from the Minerals Council for the</b></p> <p>16 <b>activities that are the subject of this</b></p> <p>17 <b>litigation?</b></p> <p>18 MR. BALL: Objection.</p> <p>19 Mischaracterizes the evidence.</p> <p>20 <b>Q (By Mr. Fields) You can answer.</b></p> <p>21 A He says -- he's saying, do we need a</p> <p>22 rock crushing permit with the Minerals Counsel to</p> <p>23 backfill of foundations. I -- you know, we don't</p> <p>24 have anything to do with whether Enel or the</p> <p>25 construction contractor crushes rock or how they</p>
<p>Page 183</p> <p>1 <b>RNT or IEA and their role in the project?</b></p> <p>2 A I believe they were construction</p> <p>3 contractors that Enel engaged.</p> <p>4 <b>Q Yeah. I'd represent to you I think</b></p> <p>5 <b>they were the general contractor. But -- so it</b></p> <p>6 <b>looks like one of them --</b></p> <p>7 A One of them may be an engineering firm.</p> <p>8 I think -- I can't -- but I guess they may be both</p> <p>9 construction firms. There may have been a merger</p> <p>10 there or a partnership. I can't remember.</p> <p>11 <b>Q Yeah. I'll represent to you that RNT,</b></p> <p>12 <b>I believe, and IEA are the same company or they</b></p> <p>13 <b>have -- they're connected in some affiliated</b></p> <p>14 <b>subsidiaries, but they're one organization, I</b></p> <p>15 <b>believe.</b></p> <p>16 <b>But anyway, Mr. Welch is emailing Mr.</b></p> <p>17 <b>Hansen and Mr. Moskaluk at Enel to advise them on</b></p> <p>18 <b>a BIA employee who was -- came on site at the</b></p> <p>19 <b>project and was saying that a permit was needed on</b></p> <p>20 <b>September 25th, 2014, and that information was</b></p> <p>21 <b>being passed along. [So scroll up do the next</b></p> <p>22 <b>email above it, please.] And then it kicks off</b></p> <p>23 <b>another email chain, [perfect] where Mr. DiMarzio</b></p> <p>24 <b>at EGP North America sends to a group, including</b></p> <p>25 <b>Mr. Weigel, your subordinate, and another -- and a</b></p>	<p>Page 185</p> <p>1 backfill or how they construct. So I don't know</p> <p>2 why --</p> <p>3 <b>Q Right, because like you said, they --</b></p> <p>4 MS. BLAKE: We lost his video.</p> <p>5 <b>Q (By Mr. Fields) Okay. Are you there?</b></p> <p>6 <b>Welcome back. Do you need to plug in your phone</b></p> <p>7 <b>or are you good?</b></p> <p>8 A No, I'm good. When a phone call comes</p> <p>9 in, it makes me decline it and goes black for a</p> <p>10 second. Sorry.</p> <p>11 <b>Q No worries. And also, thanks for doing</b></p> <p>12 <b>that with your cell phone. I appreciate you. I</b></p> <p>13 <b>know you've been flexible with all the</b></p> <p>14 <b>technological stuff?</b></p> <p>15 A We're good. We're good.</p> <p>16 <b>Q Okay. So as you've said, Tradewind</b></p> <p>17 <b>doesn't do construction, so at this point this is</b></p> <p>18 <b>an Enel project, or an Enel employee asking the</b></p> <p>19 <b>question of if a rock crushing permit was needed</b></p> <p>20 <b>on September 30th, 2014, correct?</b></p> <p>21 A Yeah. And I -- he's not asking about a</p> <p>22 mining permit. He's just asking whether he needs</p> <p>23 a permit to crush rock.</p> <p>24 <b>Q Right. So are you aware who Joan</b></p> <p>25 <b>Heredia is?</b></p>

<p>Page 186</p> <p>1 A Yeah. Joan was, I believe, the head of</p> <p>2 permitting the environmental for Enel.</p> <p>3 Q So she sends a follow-up email the same</p> <p>4 day and say it's "Important-High," so this group</p> <p>5 of Enel employees, including Mr. Weigel, saying,</p> <p>6 "We need to act with an abundance of caution. We</p> <p>7 should not be using materials at the site that</p> <p>8 would be otherwise commercially available. I</p> <p>9 understood backfill would come from an off-site</p> <p>10 quarry. We need to discuss with Steve Champagne</p> <p>11 before proceeding. Please do not crush rock</p> <p>12 further until we have a chance to discuss."</p> <p>13 So do you have an opinion on the</p> <p>14 distinction between crushing rock and mining on</p> <p>15 the project site?</p> <p>16 MR. BALL: Objection to form.</p> <p>17 THE WITNESS: Do I have an</p> <p>18 opinion?</p> <p>19 Q (By Mr. Fields) Correct.</p> <p>20 A Yeah. I don't think crushing rock is</p> <p>21 mining, but --</p> <p>22 Q Okay. So, second question. Do you</p> <p>23 have any idea why Mr. Weigel would be still copied</p> <p>24 on these emails two weeks after the project's</p> <p>25 over? Do you think that that -- that could have</p>	<p>Page 188</p> <p>1 president and/or CEO of Grand River Dam Authority.</p> <p>2 Q Perfect. Okay. [So can you scroll</p> <p>3 down? I guess we will look at the letter,</p> <p>4 Michelle.] I had hoped to not, but, hey, let's</p> <p>5 see what's -- let's see what's in here. So it's a</p> <p>6 letter from the Osage Nation on their letterhead</p> <p>7 sent to Robin Phillips, the superintendent of the</p> <p>8 Osage Agency. "This morning my office received a</p> <p>9 report of possible misuse of the Osage mineral</p> <p>10 estate. Specifically, it's been alleged an</p> <p>11 unauthorized taking of the minerals has occurred</p> <p>12 south of the intersection of Highways 18 and 60</p> <p>13 north of Fairfax, Oklahoma, as of September 25th,</p> <p>14 2014. Photographs were taken attributed to</p> <p>15 Mr. Connor -- Dr. Connor. Copies of the photos</p> <p>16 note question enclosed therein. Please provide my</p> <p>17 office with your findings and actions on this</p> <p>18 matter as soon as possible."</p> <p>19 So that's a letter from Geoffrey</p> <p>20 Standing Bear, the Chief of the Osage Nation. I</p> <p>21 know you said earlier that you met with the chief</p> <p>22 and the GRDA and Mr. Willman on Mustang Run you</p> <p>23 recalled, but you couldn't remember when that</p> <p>24 meeting occurred. Do you think it's possible that</p> <p>25 that meeting occurred in response to this letter?</p>
<p>Page 187</p> <p>1 to do with some of the -- the responsibilities</p> <p>2 that were not -- we've previously discussed but</p> <p>3 were not completely aware of that were in place</p> <p>4 after the execution of the MIPA from Tradewind to</p> <p>5 Enel Kansas occurred on September 17th, 2014?</p> <p>6 A Yeah. It's just a -- it's -- he has a</p> <p>7 background and history that Joan may not. It's</p> <p>8 part -- that would not be an uncommon request of</p> <p>9 Enel is that we are available to answer questions,</p> <p>10 support in whatever way they need after they take</p> <p>11 ownership.</p> <p>12 Q [Roll up, Michelle.] I mean, I</p> <p>13 appreciate that. [Keep going. Keep on</p> <p>14 scrolling.] So then there's this letter -- [Okay,</p> <p>15 keep scrolling.] So you're copied on this email</p> <p>16 from Mr. Weigel to the larger group, all of which</p> <p>17 includes predominately -- I -- it's kind of a</p> <p>18 split group between Enel Green Power North America</p> <p>19 people and you and Ms. Dean. "Have you heard from</p> <p>20 Matt Sullivan -- have you heard from Dan Sullivan</p> <p>21 on getting the meeting with the chief? He</p> <p>22 apparently signed the letter below which</p> <p>23 instigated this."</p> <p>24 Do you know who Dan Sullivan is?</p> <p>25 A Dan Sullivan, I believe, was the then</p>	<p>Page 189</p> <p>1 A No. It was --</p> <p>2 Q Okay.</p> <p>3 A I believe my email indicates that I had</p> <p>4 already requested that meeting. We had a -- I</p> <p>5 believe at some point we signed a power purchase</p> <p>6 agreement, I think with GRDA, to sell the power</p> <p>7 from Mustang Run. And I believe I was -- I mean,</p> <p>8 the origin of the meeting with the chief and the</p> <p>9 Minerals Council was, as I said, to personally, as</p> <p>10 Tradewind, engage the Osage Nation and the Mineral</p> <p>11 Council. I made that request through Dan so you</p> <p>12 had -- or a call. He had the connection to make</p> <p>13 that happen. And it was -- it was about Mustang</p> <p>14 Run and our efforts to make that project a success</p> <p>15 and going into that eyes wide open trying to</p> <p>16 reestablish a positive working relationship going</p> <p>17 forward. And I think I would say --</p> <p>18 Q Now, someone --</p> <p>19 A I was surprise -- I was surprised maybe</p> <p>20 by his signature on that letter. I don't -- I</p> <p>21 don't recall exactly.</p> <p>22 Q Okay. Did you -- at the time in 20 --</p> <p>23 in September of 2014, two weeks after you've --</p> <p>24 the MIPA's been executed selling the assets to</p> <p>25 Enel Kansas, are you surprised that the lead</p>

<p>Page 190</p> <p>1 <b>permitting person at Enel Green Power North</b>  2 <b>America is concerned and trying to be cautious</b>  3 <b>about rock crushing on the site and an issue that</b>  4 <b>could be related to permitting?</b>  5 A Am I -- am I surprised?  6 <b>Q At the time, was it a surprise to you</b>  7 <b>that she was concerned about rock crushing maybe</b>  8 <b>needing a permit?</b>  9 A I wasn't aware of any rock crushing  10 that was going to occur on the project, so I was  11 surprised by her email saying that there was rock  12 crushing. But I'm not surprised that she was  13 concerned of the optics of that. I still don't  14 believe it was mining, but I -- I understand the  15 optics of seeing a rock crusher, and that that  16 could look like mining. But I -- so I don't  17 believe it is, but I think that's what she was  18 speaking towards.  19 <b>Q Gotcha.</b>  20 A We -- we were buying rock from -- I  21 believe from the quarry down the street for the  22 roads and all that stuff which is owned -- I think  23 that's a mineral -- I think that was a permitted  24 mine which is I think what's she's referencing as  25 an off-site mine where you could buy material.</p>	<p>Page 192</p> <p>1 to EGP. Do you want me to do it or advise them?  2 I forwarded the letter to Lynn Slade and Bill  3 Scott." That's on October 11th, 2014.  4 [So scroll up and let's see where it  5 goes. Right there.] And then you say, "This is a  6 letter Ryan found on the tribe's website."  7 [Scroll down. The other way so I can just see it  8 over the screen because it's blocked by  9 Mr. Gilhousen's video. Gotcha. See -- keep  10 going.]  11 "See the attached letter to Ryan Ray  12 found on the tribe's website. This is totally  13 inconsistent with the conversations with BIA of  14 late. Let us know if we need to get on the phone  15 to discuss."  16 So, on October -- I'll represent to you  17 that the letter in question was the cease and  18 desist letter from Robin Phillips, the  19 superintendent of the Osage Agency of the BIA  20 telling Mr. Venturini, the CEO of Enel Green Power  21 North America to cease and desist all excavation,  22 rock crushing, mining activities on the Osage Wind  23 project site. So in that context, what did you  24 mean at the time by saying, This is totally  25 inconsistent with the conversations with BIA as of</p>
<p>Page 191</p> <p>1 <b>Q Right. Thank you, sir. [Okay, we can</b>  2 <b>take this one down, Michelle. Can you pull up</b>  3 <b>Number 5.]</b>  4 <b>This is another exhibit that I don't</b>  5 <b>believe that we previously entered. This will be</b>  6 <b>Exhibit 205. It's Osage Wind Priv 290 through 93.</b>  7 MR. FIELDS: And by all means,  8 Mary Kathryn, OMC, I mean, Ms. Blake, Mr. Ball, if  9 I'm getting these wrong and these are not new  10 exhibits feel free to chime in if you are so  11 inclined. But I think this is a new one. This is  12 an October 11th, 2014 email chain.  13 A (By Mr. Fields) Okay. I think we've  14 looked at it maybe in different context, but there  15 has a different Bates stamp and I think its easier  16 to read. Anyway -- [Can you scroll down to the  17 very beginning. Yeah. Okay.] So I think at the  18 beginning of this e-mail chain Mr. Ray, one of the  19 other outside counsel and now trial counsel is  20 emailing a document. [Okay. Keep going, please.]  21 Then it goes to Mr. Willman and Mr. Willman passes  22 it on to Rod, Matt and Geoff. [Hold on a second.  23 Let's see what he says.] Here -- "below is a  24 letter that Ryan Ray provided from the tribe's  25 website. Someone should probably pass this along</p>	<p>Page 193</p> <p>1 late?"  2 MR. BALL: Objection to form.  3 Misstates the evidence.  4 THE WITNESS: I -- I don't recall  5 exactly which -- which conversations I was  6 referencing. I think the spirit of what I was  7 saying was as written. I must have thought it was  8 not consistent with what they were telling us. So  9 I don't remember.  10 <b>Q (By Mr. Fields) What were they telling</b>  11 <b>you? I guess -- you know better than I did. I</b>  12 <b>have no idea.</b>  13 A I don't -- I don't recall exactly. I  14 -- again, I -- my recollection is we didn't feel  15 like we were mining and we were building a wind  16 farm. And so when we get a cease and desist  17 letter that is inconsistent with our  18 understanding, and I -- I can't -- you'd have to  19 tell -- show me and tell me what the -- the BIA  20 conversations had been and if those -- I could  21 have been referencing EGP's conversations as well  22 when I say conversations. It's probably a  23 collective group of conversations.  24 <b>Q No, and I appreciate that. And I guess</b>  25 <b>to put it in context, this is on October 11th,</b></p>

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1 2014, approximately two weeks after the previous  
2 email we saw where the BIA field technician was  
3 onsite at the project saying that the rock  
4 crushing was not allowed and required a permit.  
5 So I imagine from September 25th, or September  
6 25th through October 11th, for those two weeks  
7 roughly, there may have been discussions. It's  
8 just a matter of -- I wasn't a part of those  
9 discussion. So, I'm asking if you were, but if  
10 you don't recall, that's -- I -- I understand.  
11 So are you -- can you recall any  
12 conversations you had with any BIA representatives  
13 from September 25th, 2014, through October 10th,  
14 2014?  
15 A I don't recall any specific  
16 conversations that I had with the BIA.  
17 Q Okay. Do you recall --  
18 A Or letters or communications, I don't  
19 specifically remember those, if any.  
20 Q Do you think -- do you think it could  
21 have been possible that maybe Ms. Heredia was  
22 having some conversations with BIA representatives  
23 in response to the letter from Chief Standing Bear  
24 and the letter from Ms. Phillips at the BIA?  
25 A I would expect she would be.

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1 Q But -- but for you to say that this  
2 letter, cease and desist, the BIA requesting to  
3 cease and desist of all excavation and rock  
4 crushing, to be inconsistent would mean that there  
5 was somehow a more positive working relationship,  
6 I guess, with the BIA before receipt of this  
7 letter. Is that what you were trying to state in  
8 your -- with your characterizing it as  
9 inconsistent?  
10 MR. BALL: Objection to form.  
11 Mischaracterizes the evidence.  
12 THE WITNESS: I think it's  
13 consistent with me -- what I've been saying over  
14 and over here, is that we didn't think we were  
15 mining. The whole collective diligence process  
16 led us to that conclusion, including legal  
17 counsel, and I can't recall whether -- what the  
18 specific BIA communications were.  
19 Q (By Mr. Fields) And I -- I totally  
20 appreciate that and I get that it's been seven  
21 years. But, I guess, to me there's a distinction  
22 between your -- your very rote response of, we  
23 were not -- we were not mining. We had advice of  
24 counsel that says that the permit wasn't needed,  
25 et cetera, compared with, it's totally

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1 inconsistent with the conversations with BIA as of  
2 late. So you're saying -- you in your -- your  
3 opinion, you're saying that it was inconsistent  
4 with BIA conversation as of late. And so I'm just  
5 trying to understand what were the conversations  
6 coming out of BIA? What were they engendering for  
7 Tradewind and Enel Green Power North America at  
8 this time?  
9 MR. BALL: Objection to form.  
10 THE WITNESS: I can't give you --  
11 apparently, I don't have anything to offer that  
12 you don't already have your hands on. I don't  
13 recall what exactly I was referencing. And I may  
14 have been expressing frustration as well that --  
15 at the whole situation. So, I don't know what I  
16 meant exactly because I wrote it seven, eight  
17 years ago.  
18 Q (By Mr. Fields) No, I -- I appreciate  
19 that. Do you recall anyone at the BIA, before  
20 this point, I guess of October 10th, 2014, telling  
21 you or someone else that the permit was not  
22 needed? And not -- and when I say that, I mean  
23 not coming from your legal counsel or Enel Green  
24 Power North America. I'm talking about a  
25 representative of the BIA or the OMC telling you

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1 all that you do not need this permit.  
2 A I seem to recall we communicated to the  
3 BIA that we did not -- this is what we had done  
4 and the conclusion we had come to and that we did  
5 not plan on, or require -- we're not going to be  
6 mining. We don't -- we don't believe we need a  
7 lease or a mining permit because we're not mining.  
8 Something to that effect. And I don't believe we  
9 received any -- anything to the contrary back  
10 From BIA.  
11 Q So are you saying that a lack of a  
12 response suggested to you that a permit was not  
13 needed?  
14 A I guess. We weren't mining so we  
15 didn't need a permit, and I think we communicated  
16 that to -- to the BIA and --  
17 Q I -- but -- I agree. But that's a  
18 communication from you, Tradewind or Enel Green  
19 Power North America to the BIA. I'm asking if the  
20 BIA ever communicated back and explicitly said,  
21 you do not need this permit?  
22 A I believe we received a letter  
23 suggesting that they wanted more information and  
24 that we might need a permit, and we responded  
25 saying we've provided information, we've looked at



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1 this and we don't believe we need a permit because

2 we're not mining. So yeah, when you respond to

3 someone that engages you in writing -- in writing

4 and they don't respond that -- yes, I can't make

5 someone respond.

6 **Q Or is it more true that you can't make**

7 **them give you the answer you want?**

8 MR. BALL: Objection to form.

9 THE WITNESS: I -- I can't

10 speculate on that.

11 **Q (By Mr. Fields) [Okay, scroll up --**

12 **scroll up to the next question -- email.]**

13 **So the next email is from Mr. Champagne**

14 **to Ms. Heredia. "Do you know anything about this**

15 **permit? I'm copying Bill P. and asking him to**

16 **find out if the contractor got it, assuming we do**

17 **in fact need it. Until we can confirm one way or**

18 **the other we need to comply with the letter.**

19 **Steve."**

20 **And then, that gets forwarded -- look**

21 **up above, to Mr. William Scott at Modrall Sperling**

22 **and so -- [perfect Michelle. Scroll up a little**

23 **more.] It looks like Mr. Scott sends an email to**

24 **Mr. Willman and Mr. Slade the next day on October**

25 **11, 2014, saying, "Thanks for forwarding this.**

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1 **To my knowledge this -- curious that, to my**

2 **knowledge, this is the first time that BIA or**

3 **Osage have made any mention of a sandy soil mining**

4 **permit. I've tried to find a copy of the**

5 **application for a sandy soil mining permit, a copy**

6 **of such permit, or a regulation or pamphlet**

7 **describing the permit and the application process.**

8 **So far I have not been able to locate anything**

9 **specific about such permit on the BIA website,**

10 **through the BIA, or the Osage Agency site."**

11 **Okay. So keep that in mind, and we're**

12 **going to scroll up. And I just wanted to see if**

13 **you got looped back into the email. So it looks**

14 **like you did, because you're sending the next one**

15 **from Matt Gilhousen to Champagne. So at the time,**

16 **on October 11th 2014, did you appreciate that your**

17 **outside counsel, Mr. Scott at Modrall Sperling was**

18 **not aware that he had received six months earlier**

19 **from you and Mr. Weigel the sandy soil mining**

20 **permit procedures that outlined how to go about**

21 **getting this particular permit?**

22 A Sorry. Say -- say the question again.

23 **Q Yeah. So previously we looked at an**

24 **email from April 25th of 2014 where Justin**

25 **Morrison went out and got some information about**

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1 **the sandy soil mining permit. You don't know why**

2 **he got it but he went and got it and forwarded it**

3 **to Mr. Weigel, and you guys forwarded it to**

4 **Mr. Willman and Mr. Slade and Mr. Scott. So on --**

5 **in April of 2014, Mr. Scott at Modrall Sperling,**

6 **the law firm tasked with giving you your legal**

7 **advice on why you did not need this permit, had a**

8 **copy of the procedures about how to obtain the**

9 **permit. So that's in April of 2014.**

10 **Six months later, Mr. Scott, [scroll**

11 **down to the email below this,] Mr. Scott is**

12 **asking, "Hey, thanks for forwarding this. This is**

13 **the first time I've heard of these parties make**

14 **any mention of the sandy soil mining permit. I've**

15 **tried to find a copy of this and I haven't been**

16 **able to do it. I haven't been able to locate**

17 **anything specific about it."**

18 **So I guess what I'm saying is, did you**

19 **appreciate when he sent this email five and a**

20 **half, six months after he had already received**

21 **this information, did -- did that give you pause**

22 **or concern about your legal counsel's advice that**

23 **was supposed to be advising you on whether or not**

24 **this permit is needed?**

25 MR. BALL: Objection to form.

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1 Mischaracterizes his testimony.

2 THE WITNESS: No, I -- it didn't

3 give me pause or any -- six months is a lot of

4 time. I assume he may not have had access to the

5 information he needed. I don't know. But it's

6 not -- did not give me pause for concern.

7 **Q (By Mr. Fields) But you do admit that**

8 **Modrall Sperling was specifically hired to advise**

9 **on these tribal issues, and this is the permit in**

10 **question that there has been letters back from**

11 **October of 2013 explaining vehemently why Wind**

12 **Capital Group didn't need it, and you got multiple**

13 **versions of a memo that you looked at earlier with**

14 **Ms. Blake that explained why you didn't need this**

15 **permit. And so, it didn't give you any concerns**

16 **that your counsel seemed to not recall that they**

17 **previously had it for six months at that time?**

18 MR. BALL: Objection to form.

19 MR. MAY: When you say you've got

20 the memo, what -- who's you? That you're saying

21 got memos? Mr. Gilhousen?

22 THE WITNESS: Tradewind.

23 MR. BALL: Objection to form.

24 MR. FIELDS: I appreciate what

25 you're asking, Mr. May. But I think it's pretty



<p>Page 202</p> <p>1 clear that Mr. Gilhousen was copied on all the</p> <p>2 emails in question, as was Mr.Scott.</p> <p>3 MR. MAY: I thought you said</p> <p>4 memos. I'm sorry.</p> <p>5 MR. FIELDS: Yes, I was saying</p> <p>6 memos.</p> <p>7 MR. MAY: Okay.</p> <p>8 <b>Q (By Mr. Fields) Mr. Gilhousen was</b></p> <p>9 <b>copied -- yeah, on the -- on the legal memos that</b></p> <p>10 <b>Modrall Sperling created that were the -- that</b></p> <p>11 <b>defendants allege was the legal advice that they</b></p> <p>12 <b>relied upon as to why they did not need this sandy</b></p> <p>13 <b>soil mining permit.</b></p> <p>14 <b>So considering on one hand that Modrall</b></p> <p>15 <b>Sperling is kicking out a 10-page memo and</b></p> <p>16 <b>iterating it six times over the year in question,</b></p> <p>17 <b>right when everything's about to hit the fan and</b></p> <p>18 <b>you're about a month away from getting a federal</b></p> <p>19 <b>lawsuit, the fact that your outside counsel who's</b></p> <p>20 <b>been working on this legal analysis is only, then,</b></p> <p>21 <b>in the 11th hour realizing, I need this permit.</b></p> <p>22 <b>I'm just asking if that gives you pause right</b></p> <p>23 <b>when, I guess, Tradewind had sold this project and</b></p> <p>24 <b>developed it to Enel Kansas?</b></p> <p>25 MR. MAY: The narrative I</p>	<p>Page 204</p> <p>1 with Lynn. I don't honestly remember working with</p> <p>2 the other gentleman to the extent -- for whatever</p> <p>3 reason, Lynn was my primarily contact there.</p> <p>4 <b>Q No, I appreciate that.</b></p> <p>5 MR. MAY: Let's take a break.</p> <p>6 MR. FIELDS: Okay. How about five</p> <p>7 minutes?</p> <p>8 MR. BALL: How about 10?</p> <p>9 MR. FIELDS: Okay, you drive a hard</p> <p>10 bargain.</p> <p>11 THE VIDEOGRAPHER: We're off the</p> <p>12 record at 3:13 p.m.</p> <p>13 (A break was taken from 3:13 to 3:21 p.m.)</p> <p>14 THE VIDEOGRAPHER: We're back on</p> <p>15 the record at 3:21 p.m.</p> <p>16 <b>Q (By Mr. Fields) Mr. Gilhousen, I</b></p> <p>17 <b>appreciate your patience. I think I only have one</b></p> <p>18 <b>last exhibit that you've already seen and then I</b></p> <p>19 <b>will be done. [So Michelle could you pull up</b></p> <p>20 <b>number -- Exhibit 89.] It's previously been</b></p> <p>21 <b>entered. It's Osage Wind Priv 299 through 302.</b></p> <p>22 <b>An email chain around October 11th, 2014.</b></p> <p>23 <b>[Okay. Can you scroll down just so we</b></p> <p>24 <b>can understand where this is coming from. Okay,</b></p> <p>25 <b>perfect. You can stop there. That's good enough.</b></p>
<p>Page 203</p> <p>1 questioned was when you said, you received memos,</p> <p>2 plural, and I'm asking are you suggesting you is</p> <p>3 Mr. Gilhousen individually received these memos.</p> <p>4 MR. BALL: Objection to the form.</p> <p>5 <b>Q (By Mr. Fields) Mr. Gilhousen, if you</b></p> <p>6 <b>-- if you have any questions about what I'm asking</b></p> <p>7 <b>you, feel free to ask away. But at the same time,</b></p> <p>8 <b>unless you're going to pose an objection, Mr. May,</b></p> <p>9 <b>I mean, I just -- I'm not going to answer</b></p> <p>10 <b>questions from you, even though it was helpful.</b></p> <p>11 <b>Helpful me rephrasing the question, it was helpful</b></p> <p>12 <b>to Mr. Gilhousen. So I'm still -- I guess, if you</b></p> <p>13 <b>can answer, Mr. Gilhousen, I would appreciate it,</b></p> <p>14 <b>but if -- if not, I understand.</b></p> <p>15 MR. BALL: Objection to form.</p> <p>16 Misstates the evidence. Mischaracterizes the</p> <p>17 documents and the evidence.</p> <p>18 <b>Q (By Mr. Fields) So you can answer if</b></p> <p>19 <b>you can.</b></p> <p>20 A It -- it did -- it did not give me</p> <p>21 pause if you're -- if you're suggesting that our</p> <p>22 law firm didn't know what they were talking about.</p> <p>23 I think it's six months later and it's a different</p> <p>24 party engaging them and I have full confidence in</p> <p>25 our legal counsel. I primarily remember working</p>	<p>Page 205</p> <p>1 <b>There's not much there.]</b></p> <p>2 <b>So, again, I think, Mr. Gilhousen, this</b></p> <p>3 <b>is the same email chain you were just looking at,</b></p> <p>4 <b>or one that we recently looked at, but then it's</b></p> <p>5 <b>going to have a couple of new emails at the top</b></p> <p>6 <b>that we might not have talked about so much. So</b></p> <p>7 <b>the emails are starting around October 11th, 2014.</b></p> <p>8 <b>This one looks like it was directed at Rob, Matt,</b></p> <p>9 <b>and Geoff. A letter from Ryan Ray that he found</b></p> <p>10 <b>on the tribe's website. I'll represent to you</b></p> <p>11 <b>that I think it was the cease and desist letter</b></p> <p>12 <b>from Robin Phillips on October 9th, 2014. [Okay,</b></p> <p>13 <b>scroll up, please. Keep on scrolling. Okay, stop</b></p> <p>14 <b>right there.] So then Steve Champagne chimes in</b></p> <p>15 <b>and is asking Ms. Heredia if she knows anything</b></p> <p>16 <b>about this permit. "I'm copying Bill P. to ask</b></p> <p>17 <b>him to find out if the contractor got it, assuming</b></p> <p>18 <b>they need it. Will confirm." [Okay, scroll on</b></p> <p>19 <b>up.]</b></p> <p>20 <b>And then Mr. Price, or Mr. Scott, Bill</b></p> <p>21 <b>Scott, who works with Mr. Slade at Modrall</b></p> <p>22 <b>Sperling sends this detailed response to</b></p> <p>23 <b>Mr. Willman and Mr. Slade on October 11th. Again,</b></p> <p>24 <b>I'm not going to rehash it. We've already looked</b></p> <p>25 <b>at this very email where he's surprised that they</b></p>

<p>Page 208</p> <p>1 haven't mentioned the sandy soil mining permit in 2 the past. Et cetera, et cetera. 3 [Okay, scroll up. Okay, stop right 4 there.] So then, later that day you respond, 5 "Seems like we're jumping the gun by stopping 6 work. See the email below from Bill at Modrall 7 re: his research. I believe this was looked at 8 some time ago along with the overall mineral 9 permit issue and determined to not be applicable 10 as it applies to the ODOT and pertains to using 11 minerals for state road projects." 12 MR. MAY: "Material." 13 Q (By Mr. Fields) Not to mention -- 14 MR. MAY: It says material, not 15 minerals. 16 Q (By Mr. Fields) Okay. "Not to mention 17 the fact that BIA never once brought this up in 18 the lengthy history we have with BIA on this 19 project. I would not stop anything until someone 20 shows up with a TRO as we have done nothing wrong. 21 I suggest we reach out to the -- out to BIA ASAP 22 and figure out what the hell they are thinking. 23 It's Steve's call, but that's my opinion for what 24 it's worth." 25 And so, you're sending this email on</p>	<p>Page 208</p> <p>1 counsel for the defendants or with counsel for 2 Tradewind Energy. To my understanding, Mr. May, 3 you represent Mr. Gilhousen in his personal 4 capacity. You don't represent him for Enel Green 5 Power North America, Enel Kansas or Osage Wind, 6 LLC; is that correct? 7 MR. MAY: I represent Mr. Gilhousen 8 personally. 9 MR. FIELDS: Okay, so -- 10 MR. MAY: And I don't represent 11 any of the entities that you identified. I 12 communicated with Mr. Gilhousen on the break and 13 my communications were as his attorney. And our 14 communications are privileged, and to the extent 15 you asked him about them, I object and I'm 16 instructing him not to answer. So go ahead. 17 MR. FIELDS: I appreciate that. 18 Q (By Mr. Fields) Mr. Gilhousen, did you 19 review any documents on the break? 20 A No. 21 Q Okay. So as it -- as it goes to this 22 email, even though you weren't working -- you were 23 not an employee of Enel Green Power North America, 24 Enel Kansas or Osage Wind, LLC, you characterize 25 you providing your opinion as to this issue</p>
<p>Page 207</p> <p>1 October 11th, 2014, roughly two weeks -- oh, 2 shoot, maybe three weeks after the MIPA has been 3 executed selling the assets of Osage Wind from 4 Tradewind to Enel Kansas. So now that you've seen 5 this email does it give you any additional context 6 as to what role you were playing despite the fact 7 that Tradewind had sold the asset? 8 A My role was just providing my opinion 9 in that situation. It's -- it was Enel -- Enel's 10 in the driver's side there. That's why Steve 11 Champagne and Joan were driving this conversation. 12 I mean, I -- wasn't there a conversation with Joan 13 and the BIA after the BIA official was onsite and 14 called into question the rock crushing and that -- 15 I seem to recall it was a positive conversation? 16 Q Okay. No, I mean, I appreciate what 17 you're saying. I don't know. Did -- did you talk 18 to counsel about that on the break or something, 19 or are you just trying to remember what happened. 20 MR. MAY: Well, first off, he's 21 not going to talk to you and tell you about what 22 he talked to me about, and I object. It's 23 privileged and I instruct him not to answer. 24 MR. FIELDS: Okay, so I'm not 25 asking for any privileged communications with</p>	<p>Page 209</p> <p>1 because Enel was in the driver's seat, like you 2 said, correct? 3 A Correct. 4 Q Okay. [You can scroll up Michelle, 5 please. Okay, keep scrolling up.] But then it 6 looks like Mr. Weigel responds at the end and 7 includes a larger distribution list, including 8 Ms. Heredia, yourself, Mr. Champagne, Mr. Willman, 9 et cetera. And Mr. Weigel says, "This is hugely 10 frustrating giving -- given the timeline here. 11 All he had to do was call you back that day. The 12 critical fact to me is whether or not he had a 13 site guide. Our research shows this permit isn't 14 applicable, so I think we should require more than 15 just a letter stating we should get one before 16 altering course." 17 So, from your understanding, 18 Mr. Gilhousen, was Mr. Weigel, as your subordinate 19 at that time, doing something similar to what you 20 said you were doing in this email chain, just 21 providing his opinion considering Enel Green Power 22 North America or Enel Kansas was in the drivers 23 seat? 24 A Yes. 25 Q Okay. Okay, perfect. [Can you take</p>

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1 that down Michelle?] Because of your follow-up  
 2 questions about Ms. Heredia, I think that means I  
 3 have to have ask one more exhibit of you now,  
 4 which is Exhibit No. 84. What we have as Number  
 5 8. It's Osage Wind Priv 114 to 115. It's an  
 6 October 16th, 2046 email recapping a conversation  
 7 between Ms. Heredia and Ms. Hale, the Deputy  
 8 Superintendent of the Osage Agency. Okay. [Let's  
 9 scroll down to the beginning.] It's only two  
 10 pages, and see what this is all about. [I think  
 11 that's it.]  
 12 Okay. So Mr. Heredia, is sending this  
 13 de -- is sending this detailed summary to a  
 14 distribution list that we'll look at up here, and  
 15 then we'll kind of break this letter down. So  
 16 she's sending it to Mike, who I believe is in the  
 17 Enel legal department, Mr. Scott, who works with  
 18 Mr. Slade, and Mr. Slade, along with yourself and  
 19 Mr. Weigel, Mr. Willman and some others. It's  
 20 about Osage BIA discussion. It's attorney/client  
 21 privileged information. October 16th, 2014.  
 22 So I'm going to scroll through this and  
 23 let you see a couple of these paragraphs. [So  
 24 stop right there.] I'll give you a second,  
 25 Mr. Gilhousen, to see these first four paragraphs

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1 and once you're happy with what you've seen, let  
 2 me know and I'll ask you a couple of questions.  
 3 A Do you want to scroll down?  
 4 Q Whenever you're ready.  
 5 A Perfect.  
 6 Q We'll get you to the end of the page.  
 7 A Okay.  
 8 Q All right. Okay. [And then scroll  
 9 down to the next page. I think there's just a  
 10 couple more paragraphs.] Can you see that top  
 11 line?  
 12 A Yes.  
 13 Q Specified the letter -- perfect.  
 14 A Yes.  
 15 Q Okay, perfect. [So then I think that  
 16 might be almost at the -- there, that's the end.]  
 17 So were you able to see those -- those five points  
 18 at the end? And then I think that's it.  
 19 A Yes.  
 20 Q Perfect. So Michelle is going to  
 21 scroll back to the top and we'll just go paragraph  
 22 by paragraph and then I think this is it.  
 23 And so your question to me was, you're  
 24 under the impression that some of the  
 25 conversations that were contemporaneous and timed

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1 here around October 15th-ish of 2014 between Ms.  
 2 Heredia and some people at the BIA were positive.  
 3 And so in response I want to go through this  
 4 letter.  
 5 So it looks like Ms. Heredia is giving  
 6 Mike Tierney, like assistant general counsel at  
 7 Enel Green Power North America and the attorneys  
 8 an update, and yet also including your contingency  
 9 from Enel -- Tradewind. So she's giving a recap  
 10 of this discussion.  
 11 Second paragraph --  
 12 MR. BALL: Sorry, Mr. Fields, you  
 13 glitched in my reception.  
 14 MR. FIELDS: Okay.  
 15 Q (By Mr. Fields) In the second  
 16 paragraph, Ms. Heredia says that she returned the  
 17 call to the BIA Assistant Supervisor, Jeannine  
 18 Hale. And she pulled in Robin Phillips, the  
 19 supervisor, and Tammy Canady from the real estate  
 20 department. So it's my understanding that Ms.  
 21 Heredia was having a conversation with the three  
 22 of these BIA representatives.  
 23 "They indicated to me that a sandy soil  
 24 mining permit is required pursuant to 20 CFR 214.  
 25 I asked for a more specific citation and they

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1 indicated they would send the relevant portions of  
 2 the regulations that they think are applicable."  
 3 So, do you recall -- do you recall  
 4 asking Mr. Slade in October of 2013 in the emails  
 5 we already reviewed about the applicable statutes  
 6 that would be -- that would implicate whether or  
 7 not a mining permit was needed?  
 8 A Do I recall those prior emails?  
 9 Q That we reviewed maybe an hour ago from  
 10 October 25th, 2013.  
 11 A Yes.  
 12 Q And so, if you recall, you've asked  
 13 Mr. Slade for the particular statutes that  
 14 implicated the mining permit and he provided the  
 15 various statutes in an email to you, Mr. Weigel  
 16 and I believe Mr. Freeman. And those statutes I  
 17 would represent to you -- or those regulations  
 18 were 25 CFR 211 and 25 CFR 214. Do you recall  
 19 that?  
 20 A Generally, yes.  
 21 Q Okay. And so now fast forward a year  
 22 later, those are the specific -- or that is the  
 23 specific CFR 214 that the Osage Agency BIA  
 24 representatives are -- are indicating to  
 25 Ms. Heredia that it required for the project,

<p>Page 214</p> <p>1 correct?</p> <p>2 A That looks correct.</p> <p>3 MR. BALL: Objection.</p> <p>4 Mischaracterizes the -- the email.</p> <p>5 Q (By Mr. Fields) Okay. Keep going.</p> <p>6 Next paragraph. [Can you just scroll down so I</p> <p>7 can get his little video thumbnail out of it.</p> <p>8 Perfect.] "I indicated."</p> <p>9 Okay. the second paragraph says, "I</p> <p>10 indicated we had not yet received the letter from</p> <p>11 October 9th." Okay. The next paragraph. The</p> <p>12 third one. "I stated I wanted to keep the lines</p> <p>13 of communication --</p> <p>14 MR. BALL: (Audio distortion)</p> <p>15 MR. FIELDS: Mr. Ball, is my --</p> <p>16 MR. BALL: I'm having a difficult</p> <p>17 time because -- Mr. Fields, you keep freezing on</p> <p>18 me.</p> <p>19 MR. FIELDS: Okay. Am I freezing</p> <p>20 on anybody else? Mary Kathryn, or Mr. Gilhousen?</p> <p>21 Or is it all working?</p> <p>22 MR. MAY: I think you froze -- I</p> <p>23 think you froze intermittently here on us.</p> <p>24 Robin, did you drop off?</p> <p>25 MR. FIELDS: He's still on the</p>	<p>Page 216</p> <p>1 could look into this further."</p> <p>2 Okay. So, to your knowledge you had</p> <p>3 asked Mr. Slade about the applicable CFRs back in</p> <p>4 October of 2013, correct?</p> <p>5 A I believe that date is correct. We</p> <p>6 have legal memos, et cetera, associated with the</p> <p>7 overall issue indicating we didn't need a permit.</p> <p>8 Q Yes, sir. And based on all those memos</p> <p>9 that came through and those email communications</p> <p>10 that were being had with Modrall Sperling, with</p> <p>11 Mr. Willman, with Enel Green Power North America</p> <p>12 employees and representatives, and Mr. Champagne,</p> <p>13 their general counsel, I mean, did it surprise you</p> <p>14 at the time that Ms. Heredia was saying on October</p> <p>15 16th, 2014 that only then was she receiving the</p> <p>16 reference of what the applicable CFRs may be for</p> <p>17 the sandy soil mining permit?</p> <p>18 MR. BALL: Give me a minute.</p> <p>19 (Audio distortion)</p> <p>20 THE WITNESS: It was -- that's not</p> <p>21 surprising to me based on the number of projects</p> <p>22 and passage of time and a transition from one</p> <p>23 owner to the next that the new owner may not have</p> <p>24 the documents and research at their fingertips.</p> <p>25 Q (By Mr. Fields) But Ms. Heredia --</p>
<p>Page 215</p> <p>1 screen, but I don't know.</p> <p>2 THE VIDEOGRAPHER: Do we want to</p> <p>3 go off the record?</p> <p>4 MR. MAY: He's breaking up on me.</p> <p>5 MR. FIELDS: Mr. Ball, are you</p> <p>6 still there? Maybe we should go off the record</p> <p>7 until Mr. Ball can reconnect.</p> <p>8 THE VIDEOGRAPHER: We're off the</p> <p>9 record at 3:39 p.m.</p> <p>10 (A break was taken from 3:39 to 3:40 p.m.)</p> <p>11 THE VIDEOGRAPHER: We're back on</p> <p>12 the record at 3:40 p.m.</p> <p>13 Q (By Mr. Fields) Okay. so let's just</p> <p>14 -- let's just cut to it. [So scroll down,</p> <p>15 Michelle, where it says "I told her that when we</p> <p>16 learned of the letter." Let's go to that</p> <p>17 paragraph. Okay. Can you put your little cursor</p> <p>18 by it? Okay. Awesome.]</p> <p>19 So, right there, Mr. Gilhousen, the</p> <p>20 paragraph that begins -- the second one before the</p> <p>21 bottom. "I told her that when we learned of the</p> <p>22 letter our legal counsel had done a quick search</p> <p>23 of the web, and could only come up with the ODOT</p> <p>24 information pertaining to the road base. Although</p> <p>25 we now have the CFR reference, our legal team</p>	<p>Page 217</p> <p>1 A Had she had all that information and</p> <p>2 taken the time to look -- look back at the issue,</p> <p>3 she would have realized there was a history there</p> <p>4 that she -- maybe she had forgotten about or</p> <p>5 wasn't fully aware of.</p> <p>6 Q So you -- do you -- is it your</p> <p>7 testimony that you don't think Enel had the</p> <p>8 information before the date of this email, October</p> <p>9 6th, 2014, as Ms. Heredia is stating in the</p> <p>10 paragraph we just reviewed?</p> <p>11 A No, they had --</p> <p>12 MR. BALL: Objection to form.</p> <p>13 THE WITNESS: They had all of the</p> <p>14 information that we had. That's -- we did due</p> <p>15 diligence to the project and we sold them projects</p> <p>16 based on that diligence. And we've talked at --</p> <p>17 about that throughout the day today. So I can't</p> <p>18 speak to why she didn't immediately agree -- you</p> <p>19 know, remember that prior determination about this</p> <p>20 permit but I can't speculate. It wasn't</p> <p>21 surprising to me, though.</p> <p>22 Q (By Mr. Fields) So when she says, "Our</p> <p>23 legal team will look into this further," what was</p> <p>24 she talking about at the time?</p> <p>25 A The cease and desist letter.</p>



<p>Page 218</p> <p>1 MR. BALL: I apologize, but I am                  2 having very -- I apologize, I'm still having                  3 difficulty with the audio. I'm going to ask                  4 Mr. Slade if he can take over objecting or                  5 responding to questions because I'm having                  6 difficulty with it. So unless you have objections                  7 to that I'll ask that he do that.                  8 MR. FIELDS: No objection. I'm                  9 sorry about your audio.                  10 Mr. Slade are you there?                  11 MR. SLADE: I am now unmuted. Let                  12 me see if I can get my video to start.                  13 MR. FIELDS: Okay. You're going                  14 to make an appearance here right at the end.                  15 MR. SLADE: It's time I came back                  16 on stage. Are you seeing me now?                  17 MR. FIELDS: Yes, sir.                  18 MR. SLADE: All right.                  19 <b>Q (By Mr. Fields) Okay, so,</b>                  20 <b>Mr. Gilhousen, you said it doesn't surprise you,</b>                  21 <b>but you don't think that Ms. Heredia was being</b>                  22 <b>untruthful with the BIA in her recap of the</b>                  23 <b>conversation she had with those three</b>                  24 <b>representatives on this date, do you?</b>                  25 A No. I don't think she was being</p>	<p>Page 220</p> <p>1 A Whoever these individuals were that                  2 were writing this letter, I didn't have personal                  3 interactions with them that I -- that I recall.                  4 They appear to be indicating that a permit needs                  5 to be applied for and should be granted. They                  6 just need to provide the information.                  7 I -- my perspective goes back to when                  8 we acquired the project and diligenced it with                  9 the capital and the memos and the communication to                  10 BIA based on their communication to us indicating                  11 we didn't believe we needed one for certain                  12 reasons, et cetera. And I can't -- that's about                  13 as far as I can take it in this communication.                  14 Joan is -- yeah, I can't -- I can't speak to why                  15 -- you know, what she did or didn't recall about                  16 -- or did or didn't know about the history.                  17 <b>Q Correct. I appreciate that. All</b>                  18 <b>right. [All right, I think that's the end of it,</b>                  19 <b>right? What's on the next page? Can you scroll</b>                  20 <b>-- there -- just a little bit more.]</b>                  21 So the beginning of the next paragraph,                  22 "She specified the letter stated BIA wanted us to                  23 stop work until we got a permit." I mean, that's                  24 pretty unequivocal, right? I mean, that -- the                  25 BIA's position was clearly that Enel Green Power</p>
<p>Page 219</p> <p>1 untruthful. My -- my simple point is is that we                  2 -- we went through a bunch of discovery, legal                  3 memos, et cetera. I can't say what Joan did or                  4 did not, or the construction crew or company did                  5 or didn't know about the work that we he had done                  6 when we had ownership of the asset and the                  7 continuity of that understanding.                  8 <b>Q Yes, sir --</b>                  9 A It appears as if it's somewhat -- it                  10 appears from reading the email that there -- it's                  11 somewhat disjointed.                  12 <b>Q In what way?</b>                  13 A In her understanding that we had                  14 addressed this issue previously. We already                  15 looked into this and determined that we didn't                  16 need the permit.                  17 <b>Q Yes, sir. So the last paragraph</b>                  18 <b>begins, "She stated our use of the material would</b>                  19 <b>require a permit and that she would send me the</b>                  20 <b>form."</b>                  21 Okay. Do you think that in her                  22 multiple places in this letter, or, I mean, in                  23 this email recapping your conversation with the                  24 BIA that the BIA in any way was wavering in their                  25 insistence of a permit at this point in time?</p>	<p>Page 221</p> <p>1 <b>North America or Enel Kansas or Osage Wind, LLC,</b>                  2 <b>whoever it was that was doing the work needed to</b>                  3 <b>stop until they had the permit, correct?</b>                  4 A That appears to be this individual's                  5 opinion.                  6 <b>Q Right.</b>                  7 All right. I don't have any further                  8 question about this exhibit. [You can take that                  9 down, Michelle. Thank you so much.]                  10 <b>Mr. Gilhousen, are you aware of any</b>                  11 <b>financial analysis or valuation of how much it</b>                  12 <b>would cost to comply with the -- the permit in</b>                  13 <b>question, even though you stated that it was your</b>                  14 <b>position that the permit wasn't needed?</b>                  15 A You're talking about the -- the cost to                  16 build the project without crushing rock?                  17 <b>Q No. I'm asking if there was -- you</b>                  18 <b>ever saw a financial analysis or a cost benefit</b>                  19 <b>analysis that quantified potentially how much it</b>                  20 <b>would cost to comply with the permit and if the</b>                  21 <b>project continued to go on but in compliance with</b>                  22 <b>acquiring the permit?</b>                  23 A Not to my knowledge. I don't -- I                  24 don't think I even -- I don't think I even know                  25 what -- I've never been involved in mining so I</p>



<p>Page 222</p> <p>1 don't -- yeah, I don't -- don't know how to answer</p> <p>2 that question, other than, I guess, no, would be</p> <p>3 the right answer.</p> <p>4 <b>Q Okay.</b></p> <p>5 <b>So you never saw any analysis that took</b></p> <p>6 <b>volumes of minerals that were excavated or</b></p> <p>7 <b>rendered inaccessible and multiplied them by some</b></p> <p>8 <b>number to get to a cost in which a permit would be</b></p> <p>9 <b>-- that would go to the OMC to compensate them for</b></p> <p>10 <b>the minerals that were being mined on the Osage</b></p> <p>11 <b>Wind project.</b></p> <p>12 MR. SLADE: Object to the form of</p> <p>13 the question.</p> <p>14 THE WITNESS: I do not recall a</p> <p>15 calculation of what -- that you just described.</p> <p>16 I'm not sure I understand exactly what that</p> <p>17 calculation is, but I don't recall anything along</p> <p>18 those lines.</p> <p>19 MR. FIELDS: Okay. With that I</p> <p>20 pass the witness. I appreciate your patience and</p> <p>21 thank you so much for answering all my questions.</p> <p>22 THE WITNESS: Happy to do it.</p> <p>23 MR. MAY: Anyone else?</p> <p>24 MR. SLADE: Robin. Do you want to</p> <p>25 take over. I'll yield back to you.</p> <p>Page 223</p> <p>1 MR. BALL: I just wanted to say if</p> <p>2 you can give us a few minutes to confer. My guess</p> <p>3 is we'll have no questions, but give us a couple</p> <p>4 of minutes to confer.</p> <p>5 THE VIDEOGRAPHER: We're off the</p> <p>6 record at 3:51 p.m.</p> <p>7 (A break was taken from 3:51 to 3:55 p.m.)</p> <p>8 THE VIDEOGRAPHER: We're back on</p> <p>9 the record at 3:55 p.m.</p> <p>10 MR. BALL: The defendants will</p> <p>11 reserve their questions for trial.</p> <p>12 MR. MAY: This is Kirk May. The</p> <p>13 witness wants to read and sign, please, if you'll</p> <p>14 send the transcript to me.</p> <p>15 THE VIDEOGRAPHER: This concludes</p> <p>16 the videotaped deposition of Matt Gilhousen.</p> <p>17 We're off the record at 3:56 p.m.</p> <p>18 (The deposition concluded at 3:56 p.m.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 224</p> <p>1 J U R A T</p> <p>2 USA -V- OSAGE MINERALS COUNCIL, et al.</p> <p>3 JOB FILE NO. 152613</p> <p>4 I, MATT GILHOUSEN, do hereby state under</p> <p>5 oath that I have read the above and foregoing</p> <p>6 deposition in its entirety and that the same is a</p> <p>7 full, true and correct transcription of my</p> <p>8 testimony so given at said time and place, except</p> <p>9 for the corrections noted.</p> <p>10</p> <p>11 _____</p> <p>12 Signature of witness</p> <p>13</p> <p>14 Subscribed and sworn to before me, the</p> <p>15 undersigned Notary Public in and for the State of</p> <p>16 Oklahoma, on this, the ____ day of</p> <p>17 _____, 2021.</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 Notary Public</p> <p>22</p> <p>23 My Commission Expires: _____</p> <p>24 My Commission Number: _____</p> <p>25</p> <p>Page 225</p> <p>1 E R R A T A S H E E T</p> <p>2 USA -V- OSAGE MINERALS COUNCIL, et al.</p> <p>3 DEPOSITION OF MATT GILHOUSEN</p> <p>4 REPORTER: MARCY A. KING, CSR, RPR</p> <p>5 DATE TAKEN: SEPTEMBER 10, 2021</p> <p>6 JOB FILE NO. 152613</p> <p>7 PAGE LINE CORRECTION</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>
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1 CERTIFICATE

2 STATE OF OKLAHOMA )

3 ) SS:

4 COUNTY OF OKLAHOMA )

5

6 I, Marcy A. King, a Certified Shorthand  
7 Reporter for the State of Oklahoma, certify that  
8 MATT GILHOUSEN was by me sworn to testify the  
9 truth; that the deposition was taken by me in  
10 stenotype and thereafter transcribed by computer  
11 and is a true and correct transcript of the  
12 testimony of the witness; that the deposition was  
13 taken by me on September 10, 2021 via zoom, and  
14 that I am not an attorney for or relative of  
15 either party or otherwise interested in this  
16 action.

17 Witness my hand and seal of office on  
18 this 16th day of September, 2021.

19

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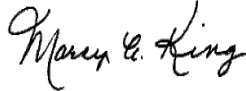
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Marcy A. King, CSR, RPR  
CSR # 0834